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ABSTRACT

A compilation of 11 federal laws that pertain to education is presented. The following are included: (1) Department of Education Organization Act, with its six titles addressing general provisions, establishment of the department, transfers of agencies and functions, administrative provisions, transitional, savings, and conforming provisions, and effective date and interim appointments; (2) General Education Provisions Act, with its three parts covering the education division of the Department of Health, Education, and Welfare; Activities; and Funds; (3) Inspector General Act of 1978; (4) Civil Rights Act of 1964, with Title IV (Desegregation of Public Education) and Title VI (Nondiscrimination in Federally Assisted Programs); (5) Age Discrimination Act of 1975; (6) Education Amendments of 1972, with Title VIII (General Provisions relating to the Assignment of Transportation of Students) and Title IX (Prohibition of Sex Discrimination); (7) Elementary and Secondary Education Amendments of 1966, with Title I (Amendment to the Elementary and Secondary Education Act of 1965) Part H (Racial Imbalance and Compliance with Civil Rights Act of 1964); (8) Elementary and Secondary Education Amendments of 1969; (9) Education Amendments of 1974, with parts A and B of Title II--Equal Educational Opportunities and the Transportation of Students (Equal Educational Opportunities Act of 1974); (10) Education Amendments of 1978, with Title XIV (Overseas Defense Dependents Education) and Title XV (Miscellaneous Provisions, Part C--Miscellaneous Amendments, Effective Dates); and (11) National Summit Conference on Education Act of 1984. (AMH)

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[COMMITTEE PRINT]

A COMPILATION OF FEDERAL EDUCATION LAWS

VOLUME I—GENERAL PROVISIONS

As Amended Through May 31, 1991

PREPARED FOR THE USE OF THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED SECOND CONGRESS
FIRST SESSION

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WILLIAM D. FORD, Chairman

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DEPARTMENT OF EDUCATION ORGANIZATION ACT

Department of Education Organization Act

(PUBLIC LAW 96-88)

SHORT TITLE: TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Department of Education Organization Act".

(20 U.S.C. 3401 note) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 668.

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TITLE I—GENERAL PROVISIONS

FINDINGS

SEC. 101. The Congress finds that—

(1) education is fundamental to the development of individual citizens and the progress of the Nation;

(2) there is a continuing need to ensure equal access for all Americans to educational opportunities of a high quality, and such educational opportunities should not be denied because of race, creed, color, national origin, or sex;

(3) parents have the primary responsibility for the education of their children, and States, localities, and private institutions have the primary responsibility for supporting that parental role;

(4) in our Federal system, the primary public responsibility for education is reserved respectively to the States and the local school systems and other instrumentalities of the States;

(5) the American people benefit from a diversity of educational settings, including public and private schools, libraries, museums and other institutions, the workplace, the community, and the home;

(6) the importance of education is increasing as new technologies and alternative approaches to traditional education are considered, as society becomes more complex, and as equal opportunities in education and employment are promoted;

(7) there is a need for improvement in the management and coordination of Federal education programs to support more effectively State, local, and private institutions, students, and parents in carrying out their educational responsibilities;

(8) the dispersion of education programs across a large number of Federal agencies has led to fragmented, duplicative, and often inconsistent Federal policies relating to education;

(9) Presidential and public consideration of issues relating to Federal education programs is hindered by the present organizational position of education programs in the executive branch of the Government; and

(10) there is no single, full-time, Federal education official directly accountable to the President, the Congress, and the people.

(20 U.S.C. 3401) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 669.

PURPOSES

SEC. 102. The Congress declares that the establishment of a Department of Education is in the public interest, will promote the general welfare of the United States, will help ensure that education issues receive proper treatment at the Federal level, and will enable the Federal Government to coordinate its education activities more effectively. Therefore, the purposes of this Act are—

(1) to strengthen the Federal commitment to ensuring access to equal educational opportunity for every individual;

(2) to supplement and complement the efforts of States, the local school systems and other instrumentalities of the States, the private sector, public and private educational institutions, public and private nonprofit educational research institutions, community-based organizations, parents, and students to improve the quality of education;

(3) to encourage the increased involvement of the public, parents, and students in Federal education programs;

(4) to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information;

(5) to improve the coordination of Federal education programs;

(6) to improve the management and efficiency of Federal education activities, especially with respect to the process, procedures, and administrative structures for the dispersal of Federal funds, as well as the reduction of unnecessary and duplicative burdens and constraints, including unnecessary paperwork, on the recipients of Federal funds; and

(7) to increase the accountability of Federal education programs to the President, the Congress, and the public.

(20 U.S.C. 3402) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 670.

FEDERAL-STATE RELATIONSHIPS

SEC. 103. (a) It is the intention of the Congress in the establishment of the Department to protect the rights of State and local governments and public and private educational institutions in the areas of educational policies and administration of programs and to

strengthen and improve the control of such governments and institutions over their own educational programs and policies. The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States.

(b) No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize the Secretary or any such officer to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, over any accrediting agency or association, or over the selection or content of library resources, textbooks, or other instructional materials by any educational institution or school system, except to the extent authorized by law.

(c) The Secretary shall not, during the period within eight months after the effective date of this Act, take any action to withhold, suspend, or terminate funds under any program transferred by this Act by reason of the failure of any State to comply with any applicable law requiring the administration of such a program through a single organizational unit.

(20 U.S.C. 3403) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 670.

DEFINITIONS

SEC. 104. As used in this Act, unless otherwise provided or indicated by the context—

(1) the term "Department" means the Department of Education or any component thereof;

(2) the term "Secretary" means the Secretary of Education;

(3) the term "Deputy Secretary" means the Deputy Secretary of Education;

(4) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program;

(5) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(6) the terms "private" and "private educational" refer to independent, nonpublic, and private institutions of elementary, secondary, and postsecondary education; and

(7) the term "office" includes any office, institute, council, unit, organizational entity, or component thereof.

(20 U.S.C. 3404) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 671; amended Nov. 5, 1990, P.L. 101-509, 104 Stat. 1454.

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

ESTABLISHMENT

SEC. 201. There is established an executive department to be known as the Department of Education. The Department shall be administered, in accordance with the provisions of this Act, under the supervision and direction of a Secretary of Education. The Sec-

retary shall be appointed by the President, by and with the advice and consent of the Senate.

(20 U.S.C. 3411) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 671.

PRINCIPAL OFFICERS

SEC. 202. (a)(1) There shall be in the Department a Deputy Secretary of Education who shall be appointed by the President, by and with the advice and consent of the Senate. During the absence or disability of the Secretary, or in the event of a vacancy in the office of the Secretary, the Deputy Secretary shall act as Secretary. The Secretary shall designate the order in which other officials of the Department shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(2)(A) The Deputy Secretary shall have responsibility for the conduct of intergovernmental relations of the Department, including assuring (i) that the Department carries out its functions in a manner which supplements and complements the education policies, programs, and procedures of the States and the local school systems and other instrumentalities of the States, and (ii) that appropriate officials of the Department consult with individuals responsible for making policy relating to education in the States and the local school systems and other instrumentalities of the States concerning differences over education policies, programs, and procedures and concerning the impact of the rules and regulations of the Department on the States and the local school systems and other instrumentalities of the States.

(B) Local education authorities may inform the Deputy Secretary of any rules or regulations of the Department which are in conflict with another rule or regulation issued by any other Federal department or agency or with any other office of the Department. If the Deputy Secretary determines, after consultation with the appropriate Federal department or agency, that such a conflict does exist, the Deputy Secretary shall report such conflict or conflicts to the appropriate Federal department or agency together with recommendations for the correction of the conflict.

(b)(1) There shall be in the Department—

(A) an Assistant Secretary for Elementary and Secondary Education;

(B) an Assistant Secretary for Postsecondary Education;

(C) an Assistant Secretary for Vocational and Adult Education;

(D) an Assistant Secretary for Special Education and Rehabilitative Services;

(E) an Assistant Secretary for Educational Research and Improvement;

(F) an Assistant Secretary for Civil Rights; and

(G) a General Counsel.

(2) Each of the Assistant Secretaries and the General Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

(c) There shall be in the Department an Inspector General appointed in accordance with the Inspector General Act of 1978 (as amended by section 508(n) of this Act).

(d) There shall be in the Department four additional officers who shall be appointed by the President, by and with the advice and consent of the Senate. The officers appointed under this subsection shall perform such functions as the Secretary shall prescribe, including—

(1) congressional relations functions;

(2) public information functions, including the provision, through the use of the latest technologies, of useful information about education and related opportunities to students, parents, and communities;

(3) functions related to monitoring parental and public participation in programs where such participation is required by law, and encouraging the involvement of parents, students, and the public in the development and implementation of departmental programs;

(4) management and budget functions;

(5) planning, evaluation, and policy development functions, including development of policies to promote the efficient and coordinated administration of the Department and its programs and to encourage improvements in education; and

(6) functions related to encouraging and promoting the study of foreign languages and the study of cultures of other countries at the elementary, secondary, and postsecondary levels.

(e) [Repealed.]

(f) Whenever the President submits the name of an individual to the Senate for confirmation as an officer of the Department under this section, the President shall state the particular functions of the Department such individual will exercise upon taking office.

(g) Each officer of the Department established under this section shall report directly to the Secretary and shall, in addition to any functions vested in or required to be delegated to such officer, perform such additional functions as the Secretary may prescribe.

(20 U.S.C. 3412) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 671; amended Nov. 8, 1985, P.L. 99-145, 99 Stat. 720; amended Nov. 5, 1990, P.L. 101-509, 104 Stat. 1454.

OFFICE FOR CIVIL RIGHTS

SEC. 203. (a) There shall be in the Department an Office for Civil Rights, to be administered by the Assistant Secretary for Civil Rights appointed under section 202(b). Notwithstanding the provisions of section 412 of this Act, the Secretary shall delegate to the Assistant Secretary for Civil Rights all functions, other than administrative and support functions, transferred to the Secretary under section 301(a)(3).

(b)(1) The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made.

(2) Notwithstanding any other provision of law, the report required by paragraph (1) shall be transmitted to the Secretary, the President, and the Congress by the Assistant Secretary for Civil Rights without further clearance or approval. The Assistant Secretary shall provide copies of the report required by paragraph (1) to the Secretary sufficiently in advance of its submission to the President and the Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the report.

(c) In addition to the authority otherwise provided under this section, the Assistant Secretary for Civil Rights, in carrying out the provisions of this section, is authorized—

(1) to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights;

(2) to select, appoint, and employ such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office, subject to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(3) to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private organizations and persons, and to make such payments as may be necessary to carry out the compliance and enforcement functions of such Office; and

(4) notwithstanding any other provision of this Act, to obtain services as authorized by section 3109 of title 5, United States Code, at a rate not to exceed the equivalent daily rate payable for grade GS–18 of the General Schedule under section 5332 of such title.

(20 U.S.C. 3413) Enacted October 17, 1979, P.L. 96–88, 93 Stat. 673.

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

SEC. 204. There shall be in the Department an Office of Elementary and Secondary Education, to be administered by the Assistant Secretary for Elementary and Secondary Education appointed under section 202(b). The Assistant Secretary shall administer such functions affecting elementary and secondary education, both public and private, as the Secretary shall delegate. There shall be within the Office of Elementary and Secondary Education and directly under the supervision of the Assistant Secretary for Elementary and Secondary Education, an Office of Migrant Education, which shall be responsible for the administration of programs established by subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965 and by subpart 5 of part A of title IV of the Higher Education Act of 1965.

(20 U.S.C. 3414) Enacted October 17, 1979, P.L. 96–88, 93 Stat. 674; amended October 19, 1984, P.L. 98–511, sec. 701, 98 Stat. 2405.

OFFICE OF POSTSECONDARY EDUCATION

SEC. 205. There shall be in the Department an Office of Postsecondary Education, to be administered by the Assistant Secretary

for Postsecondary Education appointed under section 202(b). The Assistant Secretary shall administer such functions affecting postsecondary education, both public and private, as the Secretary shall delegate, and shall serve as the principal adviser to the Secretary on matters affecting public and private postsecondary education.

(20 U.S.C. 3415) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 674.

OFFICE OF VOCATIONAL AND ADULT EDUCATION

SEC. 206. There shall be in the Department an Office of Vocational and Adult Education, to be administered by the Assistant Secretary for Vocational and Adult Education appointed under section 202(b). The Assistant Secretary shall administer such functions affecting vocational and adult education as the Secretary shall delegate, and shall serve as principal adviser to the Secretary on matters affecting vocational and adult education. The Secretary, through the Assistant Secretary, shall also provide a unified approach to rural education and rural family education through the coordination of programs within the Department and shall work with the Federal Interagency Committee on Education to coordinate related activities and programs of other Federal departments and agencies.

(20 U.S.C. 3416) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 674.

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEC. 207. There shall be in the Department an Office of Special Education and Rehabilitative Services, to be administered by the Assistant Secretary for Special Education and Rehabilitative Services appointed under section 202(b). Notwithstanding the provisions of section 412, the Secretary shall delegate to the Assistant Secretary all functions, other than administrative and support functions, transferred to the Secretary under sections 301(a)(1) (with respect to the bureau for the education and training of the handicapped), 301(a)(2)(H), and 301(a)(4).

(20 U.S.C. 3417) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 674.

OFFICE OF EDUCATION FOR OVERSEAS DEPENDENTS

SEC. 208. [Repealed.]

(20 U.S.C. 3418) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 674; repealed Nov. 8, 1985, P.L. 99-145, 99 Stat. 720.

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

SEC. 209. There shall be in the Department an Office of Educational Research and Improvement, to be administered by the Assistant Secretary for Educational Research and Improvement appointed under section 202(b). The Assistant Secretary shall administer such functions concerning research, development, demonstration, dissemination, evaluation, and assessment activities as the Secretary shall delegate.

(20 U.S.C. 3419) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 674.

OFFICE OF BILINGUAL EDUCATION AND MINORITY LANGUAGES AFFAIRS

SEC. 210. There shall be in the Department an Office of Bilingual Education and Minority Languages Affairs, to be administered by a Director of Bilingual Education and Minority Languages Affairs, who shall be appointed by the Secretary. The Director shall coordinate the administration of bilingual education programs by the Department and shall consult with the Secretary concerning policy decisions affecting bilingual education and minority languages affairs. The Director shall report directly to the Secretary, and shall perform such additional functions as the Secretary may prescribe.

(20 U.S.C. 3420) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 675.

OFFICE OF GENERAL COUNSEL

SEC. 211. There shall be in the Department an Office of General Counsel, to be administered by the General Counsel appointed under section 202(b). The General Counsel shall provide legal assistance to the Secretary concerning the programs and policies of the Department.

(20 U.S.C. 3421) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 675.

OFFICE OF INSPECTOR GENERAL

SEC. 212. There shall be in the Department an Office of Inspector General, established in accordance with the Inspector General Act of 1978 (as amended by section 508(n) of this Act).

(20 U.S.C. 3422) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 675.

INTERGOVERNMENTAL ADVISORY COUNCIL ON EDUCATION

SEC. 213.[1]

OFFICE OF CORRECTIONAL EDUCATION

SEC. 214. (a) FINDINGS.—The Congress finds and declares that—

(1) education is important to, and makes a significant contribution to, the readjustment of incarcerated individuals to society; and

(2) there is a growing need for immediate action by the Federal Government to assist State and local educational programs for criminal offenders in correctional institutions.

(b) STATEMENT OF PURPOSE.—It is the purpose of this title to encourage and support educational programs for criminal offenders in correctional institutions.

(c) ESTABLISHMENT OF OFFICE.—The Secretary of Education shall establish within the Department of Education an Office of Correctional Education.

(d) FUNCTIONS OF OFFICE.—The Secretary, through the Office of Correctional Education established under subsection (a) of this section, shall—

(1) coordinate all correctional education programs within the Department of Education;

[1] Repealed by Public Law 101-392, Sept. 25, 1990, 104 Stat. 841.

(2) provide technical support to State and local educational agencies and schools funded by the Bureau of Indian Affairs on correctional education programs and curricula;

(3) provide an annual report to the Congress on the progress of the Office of Correctional Education and the status of correctional education in the United States;

(4) cooperate with other Federal agencies carrying out correctional education programs to ensure coordination of such programs;

(5) consult with, and provide outreach to, State directors of correctional education and correctional educators; and

(6) collect from States a sample of information on the number of individuals who complete a vocational education sequence, earn a high school degree or general equivalency diploma, or earn a postsecondary degree while incarcerated and the correlation with job placement, job retention, and recidivism.

(e) DEFINITIONS.—As used in this section—

(1) the term "criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender;

(2) the term "correctional institution" means any—

(A) prison,

(B) jail,

(C) reformatory,

(D) work farm,

(E) detention center, or

(F)[1] halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders; and

(3) the term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(20 U.S.C. 3423a) Enacted September 25, 1990, P.L. 101-392, 104 Stat. 840.

FEDERAL INTERAGENCY COMMITTEE ON EDUCATION

SEC. 215. (a) There is established a Federal Interagency Committee on Education (hereafter referred to in this section as the "Committee"). The Committee shall assist the Secretary in providing a mechanism to assure that the procedures and actions of the Department and other Federal departments and agencies are fully coordinated.

(b) The Committee shall study and make recommendations for assuring effective coordination of Federal programs, policies, and administrative practices affecting education, including—

(1) consistent administration and development of policies and practices among Federal agencies in the conduct of related programs;

[1] So in law. See P.L. 101-392, sec. 602(a)(3), 104 Stat. 841.

(2) full and effective communication among Federal agencies to avoid unnecessary duplication of activities and repetitive collection of data;

(3) full and effective cooperation with the Secretary on such studies and analyses as are necessary to carry out the purposes of this Act;

(4) coordination of related programs to assure that recipients of Federal assistance are efficiently and responsively served; and

(5) full and effective involvement and participation of students and parents in Federal education programs.

(c) The Committee shall be composed of the Secretary, who shall chair the Committee, and senior policy making officials from those Federal agencies, commissions, and boards that the President may find appropriate.

(d) The Director of the Office of Management and Budget, the Chairman of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, and the Executive Director of the Domestic Policy Staff may each designate a staff member to attend meetings of the Committee.

(e) The Committee shall conduct a study concerning the progress, effectiveness, and accomplishments of Federal vocational education and training programs, and the need for improved coordination between all federally funded vocational education and training programs. The Committee shall report the findings of such study to the Secretary and the Congress within two years of the date of enactment of this Act.

(f) The Committee shall meet at least twice each year. The Secretary may establish subcommittees of the Committee to facilitate coordination in important areas of Federal activity.

(g) The Secretary and the head of each agency represented on the Committee under subsection (c) shall furnish necessary assistance to the Committee.

(20 U.S.C. 3424) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 676; amended September 25, 1990, P.L. 101-392, sec. 602(a)(3), 104 Stat. 840.

TITLE III—TRANSFERS OF AGENCIES AND FUNCTIONS

TRANSFERS FROM THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SEC. 301. (a) There are transferred to the Secretary—

(1) all functions of the Assistant Secretary for Education and of the Commissioner of Education of the Department of Health, Education, and Welfare, and all functions of the Office of such Assistant Secretary and of the Education Division of the Department of Health, Education, and Welfare and of any officer or component of such Office or Division;

(2) all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare under—

(A) the General Education Provisions Act;

(B) the Elementary and Secondary Education Act of 1965;

(C) the Higher Education Act of 1965;

(D) the Education Amendments of 1978;
(E) the Act of August 30, 1890 (7 U.S.C. 321-328);
(F) the National Defense Education Act of 1958;
(G) the International Education Act of 1966;
(H) the Individuals with Disabilities Education Act;
(I) part B of title V of the Economic Opportunity Act of 1964;
(J) the National Commission on Libraries and Information Science Act;
(K) the Vocational Education Act of 1963;
(L) the Career Education Incentive Act;
(M) laws relating to the relationship between (i) Gallaudet College, Howard University, the American Printing House for the Blind, and the National Technical Institute for the Deaf, and (ii) the Department of Health, Education, and Welfare;
(N) the Model Secondary School for the Deaf Act;
(O) subpart A of part IV of title III of the Communications Act of 1934 with respect to the telecommunications demonstration program;
(P) section 203(k) of the Federal Property and Administrative Services Act of 1949 with respect to donations of surplus property for educational purposes; and
(Q) the Alcohol and Drug Abuse Education Act;

(3) all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare with respect to or being administered by the Office for Civil Rights which relate to functions transferred by this section;

(4)(A) all functions of the Secretary of Health, Education, and Welfare and of the Department of Health, Education, and Welfare under the Rehabilitation Act of 1973, except that the provisions of this subparagraph shall not be construed to transfer to the Secretary the functions of the Secretary of Health, Education, and Welfare under sections 222 and 1615 of the Social Security Act;

(B) all functions with respect to or being administered by the Secretary of Health, Education, and Welfare through the Commissioner of Rehabilitation Services under the Act of June 20, 1936, commonly referred to as the Randolph-Sheppard Act (20 U.S.C. 107 et seq.);

(C) all functions of the Commissioner of Rehabilitation and the Director of the National Institute of Handicapped Research of the Department of Health, Education, and Welfare under the Rehabilitation Act of 1973;

(5) all functions of the Institute of Museum Services of the Department of Health, Education, and Welfare, and of the Director thereof;

(6) all functions of the Advisory Council on Education Statistics; and

(7) all functions of the Federal Education Data Acquisition Council.

(b) There are transferred to the Department—

(1) all offices in the Office of the Assistant Secretary for Education or in the Education Division of the Department of Health, Education, and Welfare;

(2) all offices in the Department of Health, Education, and Welfare established under the provisions of law listed in subparagraphs (A) through (Q) of subsection (a)(2);

(3) all offices in the Department of Health, Education, and Welfare established under the Rehabilitation Act of 1973;

(4) the Institute of Museum Services of the Department of Health, Education, and Welfare;

(5) the Advisory Council on Education Statistics;

(6) the Federal Education Data Acquisition Council; and

(7) any advisory committee of the Department of Health, Education, and Welfare giving advice or making recommendations that primarily concern education functions transferred by this section.

(c) There are transferred to the Secretary all functions of the Secretary of Health, Education, and Welfare, the Assistant Secretary for Education, or the Commissioner of Education of the Department of Health, Education, and Welfare, as the case may be, with respect to—

(1) the Education Division of the Department of Health, Education, and Welfare;

(2) the Office of the Assistant Secretary for Education, including the National Center for Education Statistics; and

(3) any advisory committee in the Department of Health, Education, and Welfare giving advice and making recommendations principally concerning education functions transferred by this section.

(d) Nothing in the provisions of this section or in the provisions of this Act shall authorize the transfer of functions under part A of title V of the Economic Opportunity Act of 1964, relating to Project Head Start, from the Secretary of Health, Education, and Welfare to the Secretary.

(20 U.S.C. 3441) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 677; amended Oct. 30, 1990, P.L. 101-476, sec. 901(a)(2), 104 Stat. 1142.

TRANSFERS FROM THE DEPARTMENT OF DEFENSE

SEC. 302. [Repealed.]

(20 U.S.C. 3442) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 679; amended Sept. 8, 1982, P.L. 97-252, sec. 1118, 96 Stat. 753; amended Sept. 24, 1983, P.L. 98-94, sec. 1223, 97 Stat. 692; repealed Nov. 8, 1985, P.L. 99-145, sec. 1204(a), 99 Stat. 720.

TRANSFERS FROM THE DEPARTMENT OF LABOR

SEC. 303. (a) Notwithstanding the provisions of section 601 of this Act, there shall be transferred to the Secretary, at such time on or after the effective date of this Act as the Secretary certifies that there has been established in the Department a single component responsible for the administration and the coordination of programs relating to the education of migrants, all functions of the Secretary of Labor or the Department of Labor under section 303(c)(2) of the Comprehensive Employment and Training Act.

(b) The Secretary is authorized to conduct the functions transferred by subsection (a).

(20 U.S.C. 3443) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 680.

TRANSFERS OF PROGRAMS FROM THE NATIONAL SCIENCE FOUNDATION

SEC. 304. (a)(1) There are transferred to the Secretary all programs relating to science education of the National Science Foundation or the Director of the National Science Foundation established prior to the effective date of this Act pursuant to the National Science Foundation Act of 1950, except the programs or parts of programs, as determined after review by the Director of the Office of Science and Technology Policy and the Director of the National Science Foundation, which relate to—

(A) scientific career development;

(B) the continuing education of scientific personnel;

(C) increasing the participation of women, minorities, and the handicapped in careers in science;

(D) the conduct of basic and applied research and development applied to science learning at all educational levels and the dissemination of results concerning such research and development; and

(E) informing the general public of the nature of science and technology and of attendant values and public policy issues.

(2) Except as provided in paragraph (1), no mission oriented research functions or programs of the National Science Foundation or any other Federal agency shall be transferred by this Act.

(b) The Secretary is authorized to conduct the programs transferred by subsection (a). In conducting such programs the Secretary shall consult, as appropriate, with the Director of the National Science Foundation, and shall establish advisory mechanisms designed to assure that scientists and engineers are fully involved in the development, implementation, and review of science education programs.

(c) The annual report to be transmitted by the Secretary pursuant to section 426 shall include a description of arrangements, developed by the Secretary in consultation with the Director of the National Science Foundation, for coordinated planning and operation of science education programs, including measures to facilitate the implementations of successful innovations.

(d) Nothing in this section is intended to repeal or limit the authority of the National Science Foundation or the Director of the National Science Foundation to initiate and conduct programs under the National Science Foundation Act of 1950.

(20 U.S.C. 3444) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 680.

TRANSFERS FROM THE DEPARTMENT OF JUSTICE

SEC. 305. There are transferred to the Secretary all functions of the Attorney General and of the Law Enforcement Assistance Administration with regard to the student loan and grant programs known as the law enforcement education program and the law enforcement intern program authorized by subsections (b), (c), and (f) of section 406 of the Omnibus Crime Control and Safe Streets Act of 1968.

(20 U.S.C. 3445) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 680.

TRANSFERS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SEC. 306. There are transferred to the Secretary all functions relating to college housing loans of the Secretary of Housing and Urban Development and of the Department of Housing and Urban Development under title IV of the Housing Act of 1950.

(20 U.S.C. 3446) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 681.

EFFECT OF TRANSFERS

SEC. 307. The transfer of a function or office from an officer or agency to the Secretary or to the Department includes any aspects of such function or office vested in a subordinate of such officer or in a component of such agency.

(20 U.S.C. 3447) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 681.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART A—PERSONNEL PROVISIONS

OFFICERS AND EMPLOYEES

SEC. 401. (a) The Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Secretary and the Department. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5 of the United States Code.

(b)(1) At the request of the Secretary, the Director of the Office of Personnel Management shall, under section 5108 of title 5, United States Code, provide for the establishment in each of the grade levels GS-16, GS-17, and GS-18 of a number of positions in the Department equal to the number of positions in that grade level which were used primarily for the performance of functions and offices transferred under this Act and which were assigned and filled on the day before the effective date of this Act.

(2) At the request of the Secretary, the Director of the Office of Personnel Management shall, under section 3104 of title 5, United States Code, provide for the establishment in the Office created by section 209 of this Act of a number of scientific, professional, and technical positions outside of the General Schedule equal to the number of such positions which were used primarily for the performance of functions and offices transferred under this Act and which were assigned and filled on the day before the effective date of this Act.

(3) Appointments to positions provided for under this subsection may be made without regard to the provisions of section 3324 of title 5 of the United States Code, if the individual appointed in such position is an individual who is transferred in connection with the transfer of functions and offices under this Act and, on the day preceding the effective date of this Act, holds a position and has

duties comparable to those of the position to which appointed hereunder.

(4) The authority under this subsection with respect to any position shall terminate when the person first appointed to fill such position ceases to hold such position.

(5) For purposes of section 414(a)(3)(A) of the Civil Service Reform Act of 1978, an individual appointed under this subsection shall be deemed to occupy the same position as the individual occupied on the day preceding the effective date of this Act.

(d) Notwithstanding any other provision of law, the Director of the Office of Personnel Management shall establish positions within the Senior Executive Service for 15 limited-term appointees. The Secretary shall appoint individuals to such positions as provided by section 3394 of title 5, United States Code. Such positions shall expire on the later of three years after the effective date of this Act or three years after the initial appointment to each position. Positions in effect under this subsection shall be taken into account in applying the limitations on positions prescribed under section 3134(e) and section 5108 of such title.

(e) Nothing in this Act shall be construed to prevent the application of any Indian preference law in effect on the day before the date of enactment of this Act to any function or office transferred by this Act and subject to any such law on the day before the date of enactment of this Act. Any function or office transferred by this Act and subject to any such law shall continue to be subject to any such law.

(f) [Repealed.]

(20 U.S.C. 3461) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 681; amended Nov. 8, 1985, P.L. 99-145, 99 Stat. 720; amended Oct. 17, 1986, P.L. 99-498, 100 Stat. 1597.

EXPERTS AND CONSULTANTS

SEC. 402. The Secretary may as provided in appropriation Acts obtain the services of experts and consultants in accordance with the provisions of section 3109 of title 5, United States Code, and may compensate such experts and consultants at rates not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of such title.

(20 U.S.C. 3462) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 682.

PERSONNEL REDUCTION AND ANNUAL LIMITATIONS

SEC. 403. (a)(1) Notwithstanding any other provision of this Act, there shall be included in each appropriation Act containing appropriations for the administration of the Department for any fiscal year beginning after September 30, 1981 (other than an appropriation Act containing only supplemental appropriations for the Department), an annual limitation on the total number of work-years for the personnel of the Department.

(2) The Secretary shall prescribe the allocation of the work-years available under paragraph (1) among the organizational units and components of the Department and shall, within 120 days after the enactment of an appropriation Act containing a work-year limitation, prepare and transmit to the Congress a report on such allocation. Such report shall include explanations and justifications for

the allocations made by the Secretary and shall indicate the necessary personnel actions which will be required as a consequence of such allocation. Not later than 120 days after the conclusion of any fiscal year to which a work-year limitation established under paragraph (1) applies, the Secretary shall prepare and transmit to the Congress a report on compliance with such limitation indicating the total work-years actually expended by the Department and by the organizational units and components to which such work-years were allocated.

(3) If the President transmits any reorganization plan under chapter 9 of title 5, United State Code, which would result in the transfer of functions or offices to the Secretary or the Department, the message transmitting the plan shall include any adjustments which may be necessary in a work-year limitation established under paragraph (1) to reflect changes in the work-years required as a result of such plan.

(b) Not later than the end of the first fiscal year beginning after the effective date of this Act, the number of full-time equivalent personnel positions available for performing functions transferred to the Secretary or the Department by this Act shall be reduced by 500.

(c)(1) Computations required to be made for purposes of this section shall be made on the basis of all personnel employed by the Department, including experts and consultants employed under section 3109 of title 5, United States Code, and all other part-time and full-time personnel employed to perform functions of the Secretary or the Department, except personnel employed under special programs for students and disadvantaged youth (including temporary summer employment).

(2) The Director of the Office of Personnel Management shall, by rule, establish a method for computing work-years for personnel of the Department as described in paragraph (1).

(d) The Director of the Office of Personnel Management shall, as soon as practicable, but not later than one year after the effective date of this Act, prepare and transmit to the Congress a report on the effects on employees of the reorganization under this Act, which shall include—

(1) an identification of any position within the Department or elsewhere in the executive branch, which it considers unnecessary due to consolidation of functions under this Act;

(2) a statement of the number of employees entitled to pay savings by reason of the organization under this Act;

(3) a statement of the number of employees who are voluntarily or involuntarily separated by reason of such reorganization;

(4) an estimate of the personnel costs associated with such reorganization;

(5) the effects of such reorganization on labor management relations; and

(6) such legislative and administrative recommendations for improvements in personnel management within the Department as the Director considers necessary.

(20 U.S.C. 3463) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 682.

PART B—GENERAL ADMINISTRATIVE PROVISIONS

GENERAL AUTHORITY

SEC. 411. (a) In carrying out any function transferred by this Act, the Secretary, or any officer or employee of the Department, may exercise any authority available by law (including appropriation Acts) with respect to such function to the official or agency from which such function is transferred, and the actions of the Secretary in exercising such authority shall have the same force and effect as when exercised by such official or agency.

(b)(1) The director of any office continued in the Department the director of which was required, prior to the effective date of this Act, to report to the Commissioner of Education or the Assistant Secretary for Education of the Department of Health, Education, and Welfare, shall report to the Secretary.

(2) The Secretary is authorized to delegate reporting requirements vested in the Secretary by paragraph (1) to any officer or employee of the Department.

(20 U.S.C. 3471) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 683.

DELEGATION

SEC. 412. Except as otherwise provided in this Act, the Secretary may delegate any function to such officers and employees of the Department as the Secretary may designate, and may authorize such successive redelegations of such functions within the Department as may be necessary or appropriate. No delegation of functions by the Secretary under this section or under any other provision of this Act shall relieve the Secretary of responsibility for the administration of such functions.

(20 U.S.C. 3472) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 684.

REORGANIZATION

SEC. 413. (a) The Secretary is authorized, subject to the requirements of section 202(f), to allocate or reallocate functions among the officers of the Department, and to establish, consolidate, alter, or discontinue such organizational entities within the Department as may be necessary or appropriate, but the authority of the Secretary under this subsection does not extend to—

(1) any office, bureau, unit, or other entity transferred to the Department and established by statute or any function vested by statute in such an entity or officer of such an entity, except as provided in subsection (b);

(2) the abolition of organizational entities established by this Act; or

(3) the alteration of the delegation of functions to any specific organizational entity required by this Act.

(b)(1) The Secretary may, in accordance with paragraph (2) of this subsection, consolidate, alter, or discontinue any of the following statutory entities, or reallocate any functions vested by statute in the following statutory entities:

(A) the Office of Bilingual Education;

(B) the Teacher Corps;

(C) the Community College Unit;
(D) the National Center for Education Statistics;
(E) the National Institute of Education;
(F) the Office of Environmental Education;
(G) the Office of Consumers' Education;
(H) the Office of Libraries and Learning Resources;
(I) the Office of Indian Education;
(J) the Office of Career Education;
(K) the Office of Non-Public Education;
(L) the bureau for the education and training for the handicapped; and
(M) the administrative units for guidance and counseling programs, the veterans' cost of instruction program, and the program for the gifted and talented children.

(2) The Secretary may alter, consolidate, or discontinue any organizational entity continued within the Department and described in paragraph (1) of this subsection or reallocate any function vested by statute in such an entity, upon the expiration of a period of ninety days after the receipt by the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives of notice given by the Secretary containing a full and complete statement of the action proposed to be taken pursuant to this subsection and the facts and circumstances relied upon in support of such proposed action.

(20 U.S.C. 3473) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 684; amended December 4, 1980, P.L. 96-496, sec. 202, 94 Stat. 2593.

RULES

SEC. 414. (a) The Secretary is authorized to prescribe such rules and regulations as the Secretary determines necessary or appropriate to administer and manage the functions of the Secretary or the Department.

(b) The Secretary, in promulgating rules and regulations as authorized by statute, shall prescribe such rules and regulations in accordance with chapter 5 of title 5, United States Code. Section 431 of the General Education Provisions Act also shall apply to such rules and regulations to the extent applicable immediately prior to the effective date of this Act, and to rules and regulations promulgated with respect to programs transferred under sections 301(a) (1), (2), and (4), 303, 304, 305, and 306.

(20 U.S.C. 3474) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 685; amended Nov. 8, 1985, P.L. 99-145, 99 Stat. 720.

CONTRACTS

SEC. 415. (a) Subject to the provisions of the Federal Property and Administrative Services Act of 1949, the Secretary is authorized to make, enter into, and perform such contracts, grants, leases, cooperative agreements, or other similar transactions with Federal or other public agencies (including State and local governments) and private organizations and persons, and to make such payments, by way of advance or reimbursement, as the Secretary may determine necessary or appropriate to carry out functions of the Secretary or the Department.

(b) Notwithstanding any other provision of this Act, no authority to enter into contracts or to make payments under this title shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts. This subsection shall not apply with respect to the authority granted under section 421.

(20 U.S.C. 3475) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 685.

REGIONAL AND FIELD OFFICES

SEC. 416. The Secretary is authorized to establish, alter, discontinue, or maintain such regional or other field offices as the Secretary may find necessary or appropriate to perform functions of the Secretary or the Department.

(20 U.S.C. 3476) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 685.

ACQUISITION AND MAINTENANCE OF PROPERTY

SEC. 417. (a) The Secretary is authorized—

(1) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

(A) schools and related facilities (but only to the extent that operation of schools and related facilities by the Department is authorized by this Act);

(B) laboratories;

(C) research and testing sites and facilities;

(D) quarters and related accommodations for employees and dependents of employees of the Department; and

(E) personal property (including patents), or any interest therein,

as may be necessary; and

(2) to provide by contract or otherwise for the establishment of eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations, and purchase and maintain equipment therefor.

(b) The authority available to the Secretary of Health, Education, and Welfare under section 524 of the Education Amendments of 1976 shall also be available to the Secretary.

(c) The authority granted by subsection (a) of this section shall be available only with respect to facilities of a special purpose nature that cannot readily be reassigned from similar Federal activities and are not otherwise available for assignment to the Department by the Administrator of General Services.

(20 U.S.C. 3477) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 685.

FACILITIES AT REMOTE LOCATIONS

SEC. 418. (a) The Secretary is authorized to provide, construct, or maintain for employees and their dependents stationed at remote locations as necessary and when not otherwise available at such remote locations—

(1) emergency medical services and supplies;

(2) food and other subsistence supplies;

(3) dining facilities;

(4) audiovisual equipment, accessories, and supplies for recreation and training;

(5) reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) living and working quarters and facilities; and

(7) transportation for dependents of employees of the Department to the nearest appropriate educational facilities.

(b) The furnishing of medical treatment under paragraph (1) of subsection (a) and the furnishing of services and supplies under paragraphs (2), (3), and (4) of subsection (a) shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such work or services or used to refund excess sums when necessary.

(20 U.S.C. 3478) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 686.

USE OF FACILITIES

SEC. 419. (a) With their consent, the Secretary may, with or without reimbursement, use the research, equipment, services, and facilities of any agency or instrumentality of the United States, of any State or political subdivision thereof, or of any foreign government, in carrying out any function of the Secretary or the Department.

(b) The Secretary is authorized to permit public and private agencies, corporations, associations, organizations, or individuals to use any real property, or any facilities, structures, or other improvements thereon, under the custody and control of the Secretary for Department purposes. The Secretary shall permit the use of such property, facilities, structures, or improvements under such terms and rates and for such period as may be in the public interest, except that the periods of such uses may not exceed five years. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements used by such permittees to a standard satisfactory to the Secretary. This subsection shall not apply to excess property as defined in section 3(e) of the Federal Property and Administrative Services Act of 1949.

(c) Proceeds from reimbursements under this section may be credited to the appropriation of funds that bear or will bear all or part of the cost of such equipment or facilities provided or to refund excess sums when necessary.

(d) Any interest in real property acquired pursuant to this Act shall be acquired in the name of the United States Government.

(20 U.S.C. 3479) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 686; amended Nov. 8, 1985, P.L. 99-145, 99 Stat. 720.

COPYRIGHTS AND PATENTS

SEC. 420. The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(20 U.S.C. 3480) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 687.

GIFTS AND BEQUESTS

SEC. 421. The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be available for disbursement upon the order of the Secretary.

(20 U.S.C. 3481) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 687.

TECHNICAL ADVICE

SEC. 422. (a) The Secretary is authorized, upon request, to provide advice, counsel, and technical assistance to applicants or potential applicants for grants and contracts and other interested persons with respect to any functions of the Secretary or the Department.

(b) The Secretary may permit the consolidation of applications for grants or contracts with respect to two or more functions of the Secretary or the Department, but such consolidation shall not alter the statutory criteria for approval of applications for funding with respect to such functions.

(20 U.S.C. 3482) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 687.

WORKING CAPITAL FUND

SEC. 423. (a) The Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to establish for the Department a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as the Secretary shall find to be desirable in the interests of economy and efficiency, including such services as—

(1) a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its components;

(2) central messenger, mail, telephone, and other communications services;

(3) office space, central services for document reproduction, and for graphics and visual aids; and

(4) a central library service.

(b) The capital of the fund shall consist of any appropriations made for the purpose of providing working capital and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for sup-

plies and services at rates that will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the Treasury as miscellaneous receipts any surplus of the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain such fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which the Secretary determines, with the approval of the Director of the Office of Management and Budget, will be performed.

(20 U.S.C. 3483) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 687.

FUNDS TRANSFER

SEC. 424. The Secretary may, when authorized in an appropriation Act in any fiscal year, transfer funds from one appropriation to another within the Department, except that no appropriation for any fiscal year shall be either increased or decreased pursuant to this section by more than 5 percent and no such transfer shall result in increasing any such appropriation above the amount authorized to be appropriated therefor.

(20 U.S.C. 3484) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 688.

SEAL OF DEPARTMENT

SEC. 425. The Secretary shall cause a seal of office to be made for the Department of such design as the Secretary shall approve. Judicial notice shall be taken of such seal.

(20 U.S.C. 3485) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 688.

ANNUAL REPORT

SEC. 426. (a) The Secretary shall, as soon as practicable after the close of each fiscal year, make a single, comprehensive report to the President for transmission to the Congress on the activities of the Department during such fiscal year. The report shall include a statement of goals, priorities, and plans for the Department together with an assessment of the progress made toward—

(1) the attainment of such goals, priorities, and plans;

(2) the more effective and efficient management of the Department and the coordination of its functions; and

(3) the reduction of excessive or burdensome regulation and of unnecessary duplication and fragmentation in Federal education programs,

accompanied where necessary by recommendations for proposed legislation for the achievement of such objectives.

(b) The report required by subsection (a) shall also include an estimate of the extent of the non-Federal personnel employed pursuant to contracts entered into by the Department under section 415 or under any other authority (including any subcontract thereunder), the number of such contracts and subcontracts pursuant to

which non-Federal personnel are employed, and the total cost of those contracts and subcontracts.

(20 U.S.C. 3486) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 688.

RELATIONSHIP TO GENERAL EDUCATION PROVISIONS ACT

SEC. 427. Except where inconsistent with the provisions of this Act, the General Education Provisions Act shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act.

(20 U.S.C. 3487) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 689.

AUTHORIZATION OF APPROPRIATIONS

SEC. 428. Subject to any limitation on appropriations applicable with respect to any function or office transferred to the Secretary or the Department, there are authorized to be appropriated for fiscal year 1980 and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this Act and to enable the Secretary to administer and manage the Department. Funds appropriated in accordance with this section shall remain available until expended.

(20 U.S.C. 3488) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 689.

TITLE V—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL

SEC. 501. (a) Except as otherwise provided in this Act, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available in connection with the functions and offices, or portions thereof transferred by this Act, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out functions or offices transferred by this Act, personnel occupying those positions on the effective date of this Act, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level IV or V of the Executive Schedule (5 U.S.C. 5315-5316) on the effective date of this Act, shall be subject to the provisions of section 503.

(20 U.S.C. 3501) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 689.

EFFECT ON PERSONNEL

SEC. 502. (a) Except as otherwise provided in this Act, the transfer pursuant to this title of full-time personnel (except special Government employees) and part-time personnel holding permanent

positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(b) Any person who, on the day preceding the effective date of this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(20 U.S.C. 3502) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 690.

AGENCY TERMINATIONS

SEC. 503. (a) On the effective date of this Act, the following entities shall terminate:

(A) the Education Division of the Department of Health, Education, and Welfare, including the Office of Education;

(B) the Office of the Assistant Secretary for Education of the Department of Health, Education, and Welfare;

(C) the Bureau of Occupational and Adult Education of the Department of Health, Education, and Welfare.

(b) Each position which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rate prescribed for level IV or V of the Executive Schedule (5 U.S.C. 5315-5316), in an office terminated pursuant to this Act shall also terminate.

(20 U.S.C. 3503) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 690; amended Nov. 8, 1985, P.L. 99-145, 99 Stat. 720.

INCIDENTAL TRANSFERS

SEC. 504. (a) The Director of the Office of Management and Budget, at such time or times as the Director shall provide, is authorized and directed to make such determinations as may be necessary with regard to the functions, offices, or portions thereof transferred by this Act, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, offices, or portions thereof, as may be necessary to carry out the provisions of this Act. The Director shall provide for the termination of the affairs of all entities terminated by this Act and for such further measures and dispositions as may be necessary to effectuate the purposes of this Act.

(b) After consultation with the Director of the Office of Personnel Management, the Director of the Office of Management and Budget is authorized, at such time as the Director of the Office of Management and Budget provides, to make such determinations as may be necessary with regard to the transfer of positions within the Senior Executive Service in connection with functions and offices transferred by this Act.

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(20 U.S.C. 3504) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 690.

SAVINGS PROVISIONS

SEC. 505. (a) All orders, determinations, rules, regulations, permits, grants, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this Act to the Secretary or the Department, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with the law by the President, the Secretary, or other authorized official, a court of competent jurisdiction, or by operation of law.

(b)(1) The provisions of this Act shall not affect any proceedings, including notices of proposed rulemaking, or any application for any license, permit, certificate, or financial assistance pending on the effective date of this Act before any department, agency, commission, or component thereof, functions of which are transferred by this Act; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this Act had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this Act had not been enacted.

(2) The Secretary is authorized to promulgate regulations providing for the orderly transfer of proceedings continued under paragraph (1) to the Department.

(c) Except as provided in subsection (e)—

(1) the provisions of this Act shall not affect suits commenced prior to the effective date of this Act, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department or agency, functions of which are transferred by this Act, shall abate by reason of the enactment of this Act. No cause of action by or against any department or agency, functions of which are transferred by this Act, or by or against any officer thereof in the official capacity of such officer shall abate by reason of the enactment of this Act.

(e) If, before the date on which this Act takes effect, any department or agency, or officer thereof in the official capacity of such officer, is a party to a suit, and under this Act any function of such department, agency, or officer is transferred to the Secretary or any other official of the Department, then such suit shall be contin-

ued with the Secretary or other appropriate official of the Department substituted or added as a party.

(f) Orders and actions of the Secretary in the exercise of functions transferred under this Act shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the agency or office, or part thereof, exercising such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this Act shall apply to the exercise of such function by the Secretary.

(20 U.S.C. 3505) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 691.

SEPARABILITY

SEC. 506. If any provision of this Act or the application thereof to any person or circumstance is held invalid, neither the remainder of this Act nor the application of such provision to other persons or circumstances shall be affected thereby.

(20 U.S.C. 3506) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 692.

REFERENCE

SEC. 507. With respect to any function transferred by this Act and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which this Act transfers such functions.

(20 U.S.C. 3507) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 692.

AMENDMENTS

SEC. 508.[1]

REDESIGNATION

SEC. 509. (a) The Department of Health, Education, and Welfare is hereby redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare or any other official of the Department of Health, Education, and Welfare is hereby redesignated the Secretary or official, as appropriate, of Health and Human Services.

(b) Any reference to the Department of Health, Education, and Welfare, the Secretary of Health, Education, and Welfare, or any other official of the Department of Health, Education, and Welfare in any law, rule, regulation, certificate, directive, instruction, or other official paper in force on the effective date of this Act shall be deemed to refer and apply to the Department of Health and Human Services or the Secretary of Health and Human Services, respectively, except to the extent such reference is to a function or office transferred to the Secretary or the Department under this Act.

[1] The text of section 508, containing amendments to existing provisions of law, is omitted here.

(20 U.S.C. 3508) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 695.

COORDINATION OF PROGRAMS AFFECTING HANDICAPPED INDIVIDUALS

SEC. 510. The Secretary of Health and Human Services shall identify, assess, coordinate, and eliminate conflict, duplication, and inconsistencies among programs significantly affecting handicapped individuals carried out by or under the Department of Health and Human Services, shall promote efficiency among such programs, and shall seek to coordinate, to the maximum extent feasible, such programs with programs significantly affecting handicapped individuals carried out by or under the Department of Education.

(20 U.S.C. 3509) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 695.

TRANSITION

SEC. 511. With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions or offices have been transferred to the Secretary or the Department, and funds appropriated to such functions or offices for such period of time as may reasonably be needed to facilitate the orderly implementation of this Act.

(20 U.S.C. 3510) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 695.

TITLE VI—EFFECTIVE DATE AND INTERIM APPOINTMENTS

EFFECTIVE DATE

SEC. 601. (a) The provisions of this Act shall take effect one hundred eighty days after the first Secretary takes office, or on any earlier date on or after October 1, 1979, as the President may prescribe and publish in the Federal Register, except that at any time on or after October 1, 1979—

(1) any of the officers provided for in title II of this Act may be nominated and appointed, as provided in such title; and

(2) the Secretary may promulgate regulations pursuant to section 505(b)(2) of this Act.

(b) Funds available to any department or agency (or any official or component thereof), the functions or offices of which are transferred to the Secretary or the Department by this Act, may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this title and other transitional and planning expenses associated with the establishment of the Department or transfer of functions or offices thereto until such time as funds for such purposes are otherwise available.

(20 U.S.C. 3401 note) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 696.

INTERIM APPOINTMENTS

SEC. 602. (a) In the event that one or more officers required by this Act to be appointed by and with the advice and consent of the

Senate shall not have entered upon office on the effective date of this Act and notwithstanding any other provisions of law, the President may designate an officer in the executive branch to act in such office for one hundred and twenty days or until the office is filled as provided in this Act, whichever occurs first.

(b) Any officer acting in an office in the Department pursuant to the provisions of subsection (a) shall receive compensation at the rate prescribed for such office under this Act.

(20 U.S.C. 3401 note) Enacted October 17, 1979, P.L. 96-88, 93 Stat. 696.

GENERAL EDUCATION PROVISIONS ACT

General Education Provisions Act[1]

SHORT TITLE; APPLICABILITY; DEFINITIONS; APPROPRIATIONS

SEC. 400. (a) This title may be cited as the "General Education Provisions Act."

(b) Except where otherwise specified, the provisions of this title shall apply to any program for which an administrative head of an education agency has administrative responsibility as provided by law or by delegation of authority pursuant to law.

(c)(1) For the purposes of this title, the term—

(A) "applicable program" means any program to which this title is, under the terms of subsection (b), applicable;

(B) "applicable statute" means—

(i) the Act or the title, part or section of an Act, as the case may be, which authorizes the appropriation for an applicable program;

(ii) this title; and

(iii) any other statute which under its terms expressly controls the administration of an applicable program;

(C)[2] "Assistant Secretary" means the Assistant Secretary of Health, Education, and Welfare for Education;

(D)[3] "Commissioner" means the Commissioner of Education;

(E) "Director" means the Director of the National Institute of Education; and

(F)[4] "Secretary" means the Secretary of Health, Education, and Welfare.

(2) Nothing in this title shall be construed to affect the applicability of the Civil Rights Act of 1964 to any program subject to the provisions of this title.

(3) No Act making appropriations to carry out an applicable program shall be considered an applicable statute.

(d) Except as otherwise limited in this title, there are authorized to be appropriated for any fiscal year such sums as may be necessary to carry out the provisions of this title.

(e)(1) The aggregate of the appropriations to the agencies in the Education Division and to the Office of Assistant Secretary for any fiscal year shall not exceed the limitations set forth for that fiscal year in subparagraph (2).

(2)(A) Except as is provided in subparagraph (B), the appropriations to which paragraph (1) applies—

(i) shall not exceed $7,500,000,000 for the fiscal year ending June 30, 1975, $8,000,000,000 for the fiscal year ending June 30,

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[1] The General Education Provision Act was enacted as title IV of Public Law 90-247. The organizational changes made by the Department of Education Reorganization Act, P.L. 96-88, are also indicated in this text.

[2] The Office of Assistant Secretary of H.E.W. for Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. (Assistant secretary's functions transferred to Secretary of Education by sec. 301 of that Act).

[3] The Education Division of H.E.W. (including the office of Commissioner of Education) was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. (Commissioner's functions transferred to Secretary of Education by sec. 301 of that Act).

[4] All previous functions of the Secretary of H.E.W. provided for in the General Education Provisions Act and various other Education-related statutes were transferred to the Secretary of Education by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

1976, and $9,000,000,000 for the fiscal year ending June 30, 1977; and

(ii) shall not exceed such amounts as may be authorized by the law and limited by this subparagraph.

(B) The limitations set forth in subparagraph (A) shall not apply—

(i) to uncontrollable expenditures under obligations created under part B of title IV of the Higher Education Act of 1965, parts C and D of title VII of such Act, and the Emergency Insured Student Loan Act of 1969; and

(ii) to any other expenditure under an obligation determined by the Commissioner pursuant to, or in accordance with, law to be an uncontrollable expenditure of the Office of Education.

(20 U.S.C. 1221) Enacted Jan. 2, 1968, P.L. 90-247, sec. 401, 81 Stat. 814; amended Oct. 16, 1968, P.L. 90-576, sec. 301(a), 82 Stat. 1094; amended April 13, 1970, P.L. 91-230, sec. 401(a)(2), 84 Stat. 164; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 505(a)(1), 88 Stat. 561, 562; see also general reference Oct. 17, 1979, P.L. 96-88, secs. 301, 503, 93 Stat. 677-679, 690.

CONTROL OF PAPERWORK

SEC. 400A. (a)(1)(A) In order to eliminate excessive detail and unnecessary and redundant information requests and to achieve the collection of information in the most efficient and effective possible manner, the Secretary shall coordinate the collection of information and data acquisitioned activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, or (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

(B) There is hereby established a Federal Education Data Acquisition Council, to consist of members appointed by the Secretary who shall represent the public and the major agencies which collect and use education data, including one representative each of the Office of Management and Budget and of the Office of Federal Statistical Policy and Standards. The members representing the public may be appointed for not more than three years. The Council shall advise and assist the Secretary with respect to the improvement, development, and coordination of Federal education information and data acquisition activities, and shall review the policies, practices, and procedures established by the Secretary. The Council shall meet regularly during the year and shall be headed by an individual from an agency which has expertise in data collection but which undertakes no major data collection of education data.

(2) For the purposes of this section, the term—

(A) "information" has the meaning given it by section 3502 of title 44, United State Code;

(B) "Federal agency" has the meaning given it by section 3502 of the same title; and

(C) "educational agency or institution" means any public or private agency or institution offering education programs.

(3)(A) The Secretary shall review and coordinate all collection of information and data acquisition activities described in paragraph (1)(A) of this subsection, in accordance with procedures approved by the Federal Education Data Acquisition Council. Such procedures shall be designed in order to enable the Secretary to determine whether proposed collection of information and data acquisition activities are excessive in detail, unnecessary, redundant, ineffective, or excessively costly, and, if so, to advise the heads of the relevant Federal agencies.

(B) No collection of information or data acquisition activity subject to such procedures shall be subject to any other review, coordination, or approval procedure outside of the relevant Federal agency, except as required by this subsection and by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, United States Code. If a requirement for information is submitted pursuant to this Act for review, the timetable for the Director's approval established in section 3507 of the Paperwork Reduction Act of 1980 shall commence on the date the request is submitted, and no independent submission to the Director shall be required under such Act.

(C) The procedures established by the Secretary shall include a review of plans for evaluations and for research when such plans are in their preliminary stages, in order to give advice to the heads of Federal agencies regarding the data acquisition aspects of such plans.

(b)(1) The Secretary shall assist each Federal agency in performing the review and coordination required by this section and shall require of each agency a plan for each collection of information and data acquisition activity, which shall include—

(A) a detailed justification of how information once collected will be used;

(B) the methods of analysis which will be applied to such data;

(C) the timetable for the dissemination of the collected data; and

(D) an estimate of the costs and man-hours required by each educational agency or institution to complete the request and an estimate of costs to Federal agencies to collect, process, and analyze the information, based upon previous experience with similar data or upon a sample of respondents.

(2) In performing the review and coordination required by this section, the Secretary shall assure that—

(A) no information or data will be requested of any educational agency or institution unless that request has been approved and publicly announced by the February 15 immediately preceding the beginning of the new school year, unless there is an urgent need for this information or a very unusual circumstance exists regarding it:

(B) sampling techniques, instead of universal responses, will be used wherever possible, with special consideration being given to the burden being placed upon small school districts, colleges, and other educational agencies and institutions; and

(C) no request for information or data will be approved if such information or data exist in the same or a similar form in

the automated indexing system required to be developed pursuant to subsection (d).

(3) Each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a thirty-day period, to comment to the Secretary on the collection of information and data acquisition activity. The exact data instruments for each proposed activity shall be available to the public upon request during this comment period.

(4) No changes may be made in the plans for the acquisition of that information or data, except changes required as a result of the review described in this section, after such plans have been finally approved under this section, unless the changed plans go through the same approval process.

(5) The Secretary may waive the requirements of this section for individual research and evaluation studies which are not designated for individual project monitoring or review, provided that—

(A) the study shall be of a nonrecurring nature;

(B) any educational agency or institution may choose whether or not to participate, and that any such decision shall not be used by any Federal agency for purposes of individual project monitoring or funding decisions;

(C) the man-hours necessary for educational agencies and institutions to respond to requests for information or data shall not be excessive, and the requests shall not be excessive in detail, unnecessary, redundant, ineffective, or excessively costly; and

(D) the Federal agency requesting information or data has announced the plans for the study in the Federal Register.

The Secretary shall inform the relevant agency or institution concerning the waiver decision within thirty days following such an announcement, or the study shall be deemed waived and may proceed. Any study waived under the provisions of this subsection shall be subject to no other review than that of the agency requesting information or data from educational agencies or institutions.

(6) Nothing in this section shall be construed to interfere with the enforcement of the provisions of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law.

(c) The Secretary shall, insofar as practicable, and in accordance with the provisions of this Act, provide educational agencies and institutions and other Federal agencies, pursuant to the requirement of section 406(f)(2)(A), with summaries of information collected and the data acquired by Federal agencies, unless such data were acquired on a confidential basis.

(d) The Secretary shall, insofar as practicable—

(1) develop standard definitions and terms consistent, wherever possible, with those established by the Office of Federal Statistical Policy and Standards, Department of Commerce, to be used by all Federal agencies in dealing with education-related information and data acquisition requests;

(2) develop an automated indexing system for cataloging all available data;

(3) establish uniform reporting dates among Federal agencies for the information and data acquisition required after review under this section;

(4) publish annually a listing of education data requests, by Federal agency, and for the programs administered in the Education Division, publish a listing annually of each such program with its appropriation and with the data burden resulting from each such program; and

(5) require the Federal agency proposing the collection of information or data acquisition activity to identify in its data instrument the legislative authority specifically requiring such collection, if any, and require the responding educational agency or institution to make the same identification if it in turn collects such information or data from other agencies or individuals.

(e)(1) Subject to the provisions of paragraph (2), the Secretary shall develop, in consultation with Federal and State agencies and local educational agencies, procedures whereby educational agencies and institutions are permitted to submit information required under any Federal educational program to a single Federal or State educational agency.

(2) Any procedures developed under paragraph (1) shall be considered regulations for the purpose of section 431 and shall be submitted subject to disapproval in accordance with section 431(e) of this Act for a period of not to exceed 60 days computed in accordance with such section.

(3) The Secretary shall submit a report to the Congress not less than once every three years, describing the implementation of this section. Such report shall contain recommendations for revisions to Federal laws which the Secretary finds are imposing undue burdens on educational agencies and institutions, and such recommendations shall not be subject to any review by any Federal agency outside the Department.

(f)(1) The Secretary is authorized to make grants from sums appropriated pursuant to this subsection to State educational agencies, including State agencies responsible for postsecondary education, for the development or improvement of education management information systems.

(2) Any State educational agency is eligible for a grant of funds under this subsection subject to the following conditions:

(A) The agency agrees to use such funds for the development or improvement of its management information system and agrees to coordinate all data collection for Federal programs administered by the agency through such a system.

(B) The agency agrees to provide funds to local educational agencies and institutions of higher education for the development or improvement of management information systems when such grants are deemed necessary by the State educational agency.

(C) The State agency agrees to take specific steps, in cooperation with the Secretary and with local educational agencies or institutions of higher education in the State, as appropriate, to eliminate excessive detail and unnecessary and redundant information requests within the State and to achieve the collection of information in the most efficient and effective possible manner so as to avoid imposing undue burdens on local educational agencies or institutions of higher education.

(g) For the purpose of carrying out this subsection—

(1) there are authorized to be appropriated for salaries and expenses $600,000 for fiscal year 1979, $1,000,000 for fiscal year 1980, and $1,200,000 for each of the two succeeding fiscal years;

(2) there are authorized to be appropriated for grants under subsections (f) (1) and (2) the sums of $5,000,000 for fiscal year 1979, $25,000,000 for fiscal year 1980, and $50,000,000 for each of the two succeeding fiscal years; and

(3) the sums appropriated according to paragraphs (1) and (2) shall be appropriated as separate line items.

(20 U.S.C. 1221-3) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1212(b), 92 Stat. 2338-2341; amended Aug. 6, 1979, P.L. 96-46, sec. 4(a), 93 Stat. 342 (effective Oct. 1, 1978); amended by reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Dec. 11, 1980, P.L. 96-511, sec. 4(a), 94 Stat. 2826.

PART A—EDUCATION DIVISION OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE[1]

THE EDUCATION DIVISION

SEC. 401. (a) There shall be, within the Department of Health, Education, and Welfare, an Education Division, composed of the agencies listed in subsection (b), which shall be headed by the Assistant Secretary.

(b)(1) The Education Division shall be composed of the following agencies:

(A) The Office of Education; and

(B) The National Institute of Education.

(2) In the Office of the Assistant Secretary there shall be a National Center for Education Statistics.

Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 504(a), 88 Stat. 561.

ASSISTANT SECRETARY FOR EDUCATION[2]

SEC. 402. (a) There shall be in the Department of Health, Education, and Welfare an Assistant Secretary for Education, who shall be appointed by the President by and with the advice and consent of the Senate. The Assistant Secretary for Education shall be compensated at the rate specified for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(b) The Assistant Secretary shall be the principal officer in the Department to whom the Secretary shall assign responsibility for the direction and supervision of the Education Division.

Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 501(a)(2)(A), 88 Stat. 560.

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[1] The Education Division of the Department of Health, Education, and Welfare was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Education Division were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677). Sections 401-403 of the General Education Provisions Act, in effect at the time of enactment of P.L. 96-88, are printed here for legislative history purposes.

[2] The Office of Assistant Secretary of Health, Education, and Welfare for Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Assistant Secretary for Education were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677).

THE OFFICE OF EDUCATION [1]

SEC. 403. (a) There shall be an Office of Education (hereinafter in this section referred to as the "Office") which shall be the primary agency of the Federal Government responsible for the administration of programs of financial assistance to educational agencies, institutions, and organizations. The Office shall have such responsibilities and authorities as may be vested in the Commissioner by law or delegated to the Commissioner in accordance with law.

(b) The Office shall be headed by the Commissioner of Education who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be subject to the direction and supervision of the Secretary.

(c)(1) The Office shall, consistent with such organization thereof which is provided by law, be divided into bureaus, and such bureaus shall be divided into divisions as the Commissioner determines appropriate.

(2)(A) There shall be regional offices of the Office established in such places as the Commissioner, after consultation with the Assistant Secretary, shall determine. Such regional offices shall carry out such functions as are specified in subparagraph (B).

(B) The regional offices shall serve as centers for the dissemination of information about the activities of the agencies in the Education Division and provide technical assistance to State and local educational agencies, institutions of higher education, and other educational agencies, institutions, and organizations and to individuals and other groups having an interest in Federal education activities.

(C) The Commissioner shall not delegate to any employee in any regional office any function which was not carried out, in accordance with regulations effective prior to June 1, 1973, by employees in such offices unless the delegation of such function to employees in regional offices is expressly authorized by law enacted after the enactment of the Education Amendments of 1974.[2]

(d)(1) There shall be, in the Office of Education, an Office of Non-Public Education to insure the maximum potential participation of nonpublic school students in all Federal educational programs for which such children are eligible.

(2) The Office shall be headed by the Deputy Commissioner for Non-Public Education, who shall be appointed by the Commissioner.

(20 U.S.C. 1221c) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 327; amended August 21, 1974, P.L. 93-380, sec. 503(a), 88 Stat. 560, 561; amended October 12, 1976, P.L. 94-482, sec. 409(a), 90 Stat. 2233; amended Nov. 1, 1978, P.L. 95-561, sec. 1241, 92 Stat. 2351; amended Oct. 19, 1980, P.L. 96-470, sec. 106(d), 94 Stat. 2238.

FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

SEC. 404. [Repealed by section 1001(c) of the Education Amendments of 1980 (94 Stat. 1491). Section 1001(a) of such Amendments

[1] The Office of Education was terminated by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 503, 93 Stat. 690. The previous functions of the Office of Education were transferred to the Secretary of Education by sec. 301 of that Act (93 Stat. 677).

[2] Sec 503(b) of P.L. 93-380 provides that the provisions of limitation set forth in this subsection shall be retroactive to June 1, 1973.

reenacted the Fund for the Improvement of Postsecondary Education as title X of the Higher Education Act of 1965.]

OFFICE OF EDUCATIONAL RESEARCH AND IMPROVEMENT

SEC. 405. (a)(1) The Congress declares it to be the policy of the United States to provide to every individual an equal opportunity to receive an education of high quality regardless of his race, color, religion, sex, age, handicap, national origin, or social class. Although the American educational system has pursued this objective, it has not attained the objective. Inequalities of opportunity to receive high quality education remain pronounced. To achieve the goal of quality education requires the continued pursuit of knowledge about education through research, improvement activities, data collection, and information dissemination. While the direction of American education remains primarily the responsibility of State and local governments, the Federal Government has a clear responsibility to provide leadership in the conduct and support of scientific inquiry into the educational process.

(2) The Congress further declares it to be the policy of the United States to—

(A) promote the quality and equity of American education,[1]

(B) advance the practice of education as an art, science, and profession;

(C) support educational research of the highest quality;

(D) strengthen the educational research and development system;

(E) improve educational techniques and training;

(F) assess the national progress of this Nation's schools and educational institutions, particularly special populations; and;

(G) collect, analyze, and disseminate statistics and other data related to education in the United States and other nations.

(3) For purposes of this section—

(A) the term "Assistant Secretary" means the Assistant Secretary for Educational Research and Improvement established by section 202 of the Department of Education Organization Act;

(B) the term "Council" means the National Advisory Council on Educational Research and Improvement established by subsection (c);

(C) the term "educational research" includes basic and applied research, development, planning, surveys, assessments, evaluations, investigations, experiments, and demonstrations in the field of education and other fields relating to education;

(D) the term "Office" means the Office of Educational Research and Improvement established by section 209 of the Department of Education Organization Act; and

(E) the terms "United States" and "State" include the District of Columbia and the Commonwealth of Puerto Rico.

(b)(1) It shall be the purpose of the Office to carry out the policies set forth in subsection (a) of this section. The Office shall be administered by the Assistant Secretary and shall include—

[1] So in original. The comma probably should be a semicolon.

(A) the National Advisory Council on Educational Research and Improvement established in subsection (c);

(B) the Center for Education Statistics established by section 406; and

(C) such other units as the Secretary deems appropriate to carry out the purposes of the Office.

(2) The Office shall, in accordance with the provisions of this section, seek to improve education in the United States through concentrating the resources of the Office on the priority research and development needs described in paragraph (3).

(3) The needs to which paragraph (2) apply are—

(A) improving student achievement;

(B) improving the ability of schools to meet their responsibilities to provide equal educational opportunities for all students, including those with limited English-speaking ability, women, older students, part-time students, minority students, gifted and talented students, handicapped students, and students who are socially, economically, or educationally disadvantaged;

(C) collecting, analyzing, and disseminating statistics and other data related to education in the United States and other nations;

(D) improving the dissemination and application of knowledge obtained through educational research and data gathering, particularly to education professionals and policy makers;

(E) encouraging the study of the sciences, the arts, and the humanities, including foreign languages and cultures;

(F) improving the data base of information on special populations and their educational status;

(G) conducting research on adult educational achievement, particularly literacy and illiteracy as it affects employment, crime, health, and human welfare;

(H) conducting research on postsecondary opportunities, especially access for minorities and women; and

(I) conducting research on education professionals, especially at the elementary and secondary levels including issues of recruitment, training, retention, and compensation.

(4) The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than October 1, and shall allow a period of sixty days for public comments and suggestions.

(c)(1) The Council shall consist of fifteen members appointed by the President, by and with the advice and consent of the Senate. In addition, there shall be such ex officio members who are officers of the United States as the President may designate, including the Assistant Secretary. A majority of the appointed members of the Council shall constitute a quorum. The Chairman of the Council shall be designated by the President from among the appointed members. Ex officio members shall not have a vote on the Council. The members of the Council shall be appointed to ensure that the Council is broadly representative of the general public; the education professions, including practitioners; policymakers and researchers; and the various fields and levels of education.

(2)(A) Except as provided in subparagraph (B), members shall be appointed to terms of three years.

(B) Of the members first appointed—

(i) five shall be apointed for terms of one year;

(ii) five shall be appointed for terms of two years; and

(iii) five shall be appointed for terms of three years;

as designated by the President at the time of appointment.

(C) Any member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of a term until a successor has taken office.

(D) An appointed member who has been a member of the Council for six consecutive years shall be ineligible for appointment to the Council during the two-year period following the expiration of the sixth year.

(3) The Council shall—

(A) advise the Secretary and the Assistant Secretary on the policies and activities carried out by the Office;

(B) review and publicly comment on the policies and acitvities of the Office;

(C) conduct such activities as may be necessary to fulfill its functions under this subsection;

(D) prepare such reports to the Secretary on the activities of the Office as are appropriate; and

(E) submit, no later than March 31 of each year, a report to the President and the Congress on the activities of the Office, and on education, educational research, and data gathering in general.

(d)(1) In order to carry out the objectives of the Office under this section, the Secretary within the limits of available resources shall—

(A) conduct educational research;

(B) collect, analyze, and disseminate the findings of education reserach;

(C) train individuals in educational research;

(D) assist and foster such research, collection, dissemination, and training through grants, cooperative agreements, and technical assistance;

(E) promote the coordination of educational research and research support within the Federal Government and otherwise assist and foster such research; and

(F) collect, analyze, and disseminate statistics and other data related to education in the United States and other nations.

(2)(A) The Secretary may appoint, for terms not to exceed three years (without regard to the provisions of title 5 of the United States Code governing appointment in the competitive service) and may compensate (without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates) such scientific or professional employees of the Office as the Secretary considers necessary to accomplish its functions. The Secretary may also appoint and compensate not more than one-fifth of the number of full-time, regular scientific or professional employees of the Office without regard to such provisions. The rate of basic pay for such employees may not exceed the maximum annual rate of pay for grade GS-15 under section 5332 of title 5 of the United States Code, except that the

pay of any employee employed before the date of enactment of the Higher Education Amendments of 1986 shall not be reduced by application of such maximum pay limitation.

(B) The Secaretary may reappoint employees described in subparagraph (A) upon presentation of a clear and convincing justification of need, for one additional term not to exceed three years. All such employees shall work on activities of the Office and shall not be reassigned to other duties outside the Office during their term.

(C) Individuals who are employed on the date of enactment of this Act and were employed by such Office on April 1, 1986, and who were employed under excepted hiring authority provided by section 209 of the Department of Education Organization Act or this section may continue to be employed for the duration of their current term.

(3)(A) The Secretary may carry out the activities in paragraph (1)—

(i) directly;

(ii) through grants, contracts, and cooperative agreements with institutions of higher education, public and private organizations, institutions, agencies, and individuals; and

(iii) through the provision of technical assistance.

(B) When making competitive awards under this subsection, the Secretary shall—

(i) solicit recommendations and advice regarding research priorities, opportunities, and strategies from qualified experts, such as education professionals and policymakers, personnel of the regional education laboratories[1] and of the research and development centers supported under paragraph (4), and the Council, as well as parents and other members of the general public;

(ii) employ suitable selection procedures utilizing the procedures and principles of peer review, except where such peer review procedures are clearly inappropriate given such factors as the relatively small amount of a grant or contract or the exigencies of the situation; and

(iii) determine that the activities assisted will be conducted efficiently, will be of high quality, and will meet priority research and development needs under this section.

(C) Whenever the Secretary enters into a cooperative agreement under this section, the Secretary shall negotiate any subsequent modifications in the cooperative agreement with all parties to the agreement affected by the modifications.

(4)(A) In carrying out the functions of the Office, the Secretary shall, in accordance with the provisions of this subsection, support—

(i) regional educational laboratories established by public agencies or private nonprofit organizations to serve the needs of a specific region of the Nation under the guidance of a regionally representative governing board, the regional agendas of which shall, consistent with the priority research and devel-

[1] So in law. Should be "regional educational laboratories".

opment needs established by subsection (b) (2) and (3), be determined by the governing boards of such labs;

(ii) research and development centers established by institutions of higher education, by institutions of higher education in consort with public agencies or private nonprofit organizations, or by interstate agencies established by compact which operate subsidiary bodies established to conduct postsecondary educational research and development;

(iii) meritorious unsolicited proposals for educational research and related activities that are authorized by this subsection; and

(iv) proposals that are specifically invited or requested by the Secretary, on a competitive basis, which meet objectives authorized by this subsection.

(B) Prior to awarding a grant or entering into a contract for a regional educational laboratory or research and development center under subparagraph (A)(i) or (A)(ii), the Secretary shall invite applicants to compete for such laboratories and centers through notice published in the Federal Register.

(C) Each application for assistance under subparagraph (A) (i) or (ii) as a regional educational laboratory or a research and development center shall contain such information as the Secretary may reasonably require, including assurances that the applicant will—

(i) be responsible for the conduct of the research and development activities;

(ii) prepare a long-range plan relating to the conduct of such research and development activities;

(iii) ensure that information developed as a result of such research and development activities, including new educational methods, practices, techniques, and products, will be appropriately disseminated;

(iv) provide technical assistance to appropriate educational agencies and institutions; and

(v) to the extent practicable, provide training for individuals, emphasizing training opportunities for women and members of minority groups, in the use of new educational methods, practices, techniques, and products developed in connection with such activities.

(D) No grant may be made and no contract entered into for assistance described under subparagraph (A) (i) or (ii) unless—

(i) proposals for assistance under this subsection are solicited from regional educational laboratories and research and development centers by the Office;

(ii) proposals for such assistance are developed by the regional educational laboratories and the research and development centers in consultation with the Office; and

(iii) the Office determines that the proposed activities will be consistent with the education research and development program and dissemination activities which are being conducted by the Office.

(E) No regional educational laboratory or research and development center receiving assistance under this subsection shall, by reason of the receipt of that assistance, be ineligible to receive any other assistance from the Office authorized by law.

(F) The Secretary shall make available adequate funds to support meritorious, unsolicited proposals as described under subparagraph (A)(iii), and provide sufficient notice of the availability of such funds to individual researchers in all regions of the country.

(5) The Secretary, from funds appropriated under this section, may establish and maintain research fellowships in the Office, for scholars, researchers, and statisticians engaged in the collection and dissemination of information about education and educational research. Subject to regulations published by the Secretary, fellowships may include such stipends and allowance, including travel and subsistence expenses provided for under title 5, United States Code, as the Secretary considers appropriate.

(6) The Secretary may award grants to institutions of higher education, including technical and community colleges as appropriate, to assess the new and emerging specialties and the technologies, academic subjects, and occupational areas requiring vocational education, with emphasis on the unique needs for preparing an adequate supply of vocational teachers of handicapped students. The Secretary shall give special consideration to the preparation required to teach classrooms of handicapped, or other highly targeted groups of students, in combination with other nonhandicapped or other nontargeted students, within the same vocational education setting.

(e)(1) There are authorized to be appropriated to carry out this section, $72,231,000 for fiscal year 1987 and such sums as may be necessary for each of the four succeeding fiscal years.

(2) The Secretary may not enter into a contract for the purpose of regional educational laboratories under subsection (d)(3)(A)(i) for a period in excess of five years.

(3) Not less than 95 per centum of funds appropriated pursuant to this subsection for any fiscal year shall be expended to carry out this section through grants, cooperative agreements, or contracts.

(4) When more than one Federal agency uses funds to support a single project under this section, the Office may act for all such agencies in administering those funds.

(f)(1) In each fiscal year for which the total amount appropriated to carry out this section and section 406 of this Act equals or exceeds the total amount appropriated for fiscal year 1986 to carry out such sections—

(A) not less than $17,760,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(ii) of this section (relating to centers);

(B) not less than $17,000,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(i) of this section (relating to labs);

(C) not less than $5,700,000 shall be available in each fiscal year to assist a separate system of 16 education resources information clearinghouses (including direct supporting dissemination services) pursuant to subsection (d)(3)(A) of this section, having the same functions and scope of work as the clearinghouses had on the date of enactment of the Higher Education Amendments of 1986;

(D) Not less than $9,500,000 for the fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 through 1993, shall be available to carry out section 406(i) of

this Act (relating to the National Assessment of Education Progress);

(E) not less than $8,750,000 shall be available in each fiscal year to carry out section 406 of this Act, except for subsection (i) of that section (relating to the Center for Educational Statistics); and

(F) not less than $500,000 shall be available in each fiscal year to carry out subsection (d)(4)(A)(iii) of this section (relating to field initiated research).

(2) If the sums appropriated for any fiscal year are less than the amount required to be made available under subparagraphs (A) through (F) of paragraph (1), then each of the amounts required to be made available under such subparagraphs shall be ratably reduced. If additional amounts become available for any such fiscal year, such reduced amounts shall be increased on the same basis as they were reduced.

(20 U.S.C. 1221e) Enacted June 23, 1972, P.L. 92-318, sec. 301(a)(2), 86 Stat. 328, 332; amended August 21, 1974, P.L. 93-380, sec. 502(b)(2)(B), 88 Stat. 560; amended October 12, 1976, P.L. 94-482, sec. 403, 90 Stat. 2227, 2228, 2229, 2230; amended Nov. 1, 1978, P.L. 95-561, sec. 1242, 92 Stat. 2352, 2353; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 3, 1980, P.L. 96-374, sec. 1311-1314, 94 Stat. 1498, 1499; amended Oct. 19, 1984, P.L. 98-511, secs. 702(a), 703, 704(a), 98 Stat 2405, 2406; amended Oct. 17, 1986, P.L. 99-498, §1401(a), 100 Stat. 1589; amended June 3, 1987, P.L. 100-50, §24(a), 101 Stat. 362; amended April 28, 1988, P.L. 100-297, secs. 3001(p), 3002, 3403(c), 102 Stat. 337, 349.

NATIONAL CENTER FOR EDUCATION STATISTICS

SEC. 406. (a)(1) There is established, within the Office of Educational Research and Improvement, a National Center for Education Statistics (hereafter[1] in this section referred to as the "Center"). The general design and duties of the National Center for Education Statistics shall be to acquire and diffuse among the people of the United States useful statistical information on subjects connected with education (in the most general and comprehensive sense of the word) particularly the retention of students, the assessment of their progress, the financing of institutions of education, financial aid to students, the supply of and demand for teachers and other school personnel, libraries, comparisons of the education of the United States and foreign nations and the means of promoting material, social, and intellectual prosperity through education.

(2)(A) The Center shall be headed by a Commissioner of Education Statistics who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioner of the National Center for Education Statistics shall have substantial experience and knowledge of programs encompassed by the National Center[2] The Commissioner shall be paid in accordance with section 5315 of title 5, United States Code. The Commissioner shall serve for terms of 4 years, except that the initial appointment shall commence June 21, 1991.

(B) There shall be within the Center (i) an Associate Commissioner for Statistical Standards and Methodology who shall be qualified in the field of mathematical statistics or statistical methodology;

[1] So in original. "Hereafter" probably should be striken.
[2] So in original. Probably should be followed by a period.

and (ii) an Associate Commissioner for Data Collection and Dissemination, who shall be an individual who has extensive knowledge of uses of statistics for policy purposes at all levels of American education, and who shall promote the participation of States, localities, and institutions of higher education in designing education statistics programs, encourage widespread dissemination and use of the Center's data, and promote United States participation in international and regional education statistics. The Commissioner may appoint such other Associate Commissioners as may be necessary and appropriate.".

(b) The purpose of the Center shall be to collect, and analyze[1] and disseminate statistics and other data related to education in the United States and in other nations. The Center shall—

(1) if feasible, on a State-by-State basis, collect, collate, and, from time to time, report full and complete statistics on the conditions of education in the United States;

(2) conduct and publish reports on specialized analyses of the meaning and significance of such statistics;

(3) assist State and local educational agencies, including State agencies responsible for postsecondary education, in improving and automating their statistical and data collection activities (and shall establish a special program to train employees of such State and local agencies in the use of the Center's standard statistical procedures and concepts and may establish a fellows program to temporarily appoint such employees as fellows at the Center for the purpose of familiarization with the operations of the Center);

(4) review and report on educational activities in foreign countries;

(5) conduct a continuing survey of institutions of higher education and local educational agencies to determine the demand for, and the availability of, qualified teachers and administrative personnel, especially in critical areas within education which are developing or are likely to develop, and assess the extent to which programs administered in the Department of Education are helping to meet the needs identified as a result of such continuing survey; and

(6) access[2] periodically the current and projected supply and demand for elementary and secondary school teachers (including teachers at the pre-school level) and early childhood education development personnel with particular attention to—

(A) long-term and short-term needs for personnel in various subject areas or teaching specialities;

(B) shortages in particular types of schools or communities, and in States or regions;

(C) the number of minorities entering teaching;

(D) the proportions of women and minorities in educational administration, and the trends over time;

(E) the demographic characteristics, academic qualifications, job preparation, experience and skills of existing teachers and new entrants in the field of education;

[1] So in law. Do not need "and".
[2] So in original. Probably should be "assess".

(F) the effect of the introduction of State mandated teacher competency tests on the demographic and educational characteristics of teachers and the supply of teachers; and

(G) the rate at which teachers leave teaching, their reasons for leaving, the sources of supply for new entrants, and the trends over time.

(c)(1) There shall be an Advisory Council on Education Statistics which shall be composed of 7 public members appointed by the Secretary and such ex officio members as are listed in subparagraph (2). Not more than 4 of the appointed members of the Council may be members of the same political party.

(2) The ex officio members of the Council shall be—

(A) the Assistant Secretary,

(B) the Director of the Census,

(C) the Commissioner of Labor Statistics,

(D) Commissioner[1] of Education Statistics, and;[2]

(E) Chairman,[3] National Commission on Libraries and Information Science.

(3) Appointed members of the Council shall serve for terms of 3 years, as determined by the Secretary, except that in the case of initially appointed members of the Council, they shall serve for shorter terms to the extent necessary that the terms of office of not more than 3 members expire in the same calendar year.

(4) The Commissioner of Education Statistics shall serve as the non-voting presiding officer of the Council.

(5)(A) The Council shall meet at the call of the presiding officer, except that it shall meet—

(i) at least four times during each calendar year; and

(ii) in addition, whenever three voting members request in writing that the presiding officer call a meeting.

(B) Six members of the Council shall constitute a quorum of the Council.

(6) The provisions of section 448(b) of part D of this title shall not apply to the Council established under this subsection.

(7) The Council shall review general policies for the operation of the Center and shall be responsible for advising on standards to insure[4] that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

(8) The Commissioner may appoint such other ad hoc advisory committees as the Commissioner considers necessary.

(d)(1) The Commissioner shall, not later than June 1 of each year, submit to the Congress an annual report which—

(A) contains a description of the activities of the Center during the then current fiscal year and a projection of its activities during the succeeding fiscal year;

(B) sets forth estimates of the cost of the projected activities for such succeeding fiscal year; and

(C) includes a statistical report on the condition of education in the United States during the two preceding fiscal years and

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[1] So in original. Probably should read "the Commissioner".
[2] So in original. Probably should read "Statistics; and".
[3] So in original. Probably should read "the Chairman".
[4] So in original. Probably should be "ensure".

a projection, for the three succeeding fiscal years, of estimated statistics related to education in the United States.

(2) The Secretary shall submit annually a report to the Congress giving information of the State of Education in the Nation. In such report the Secretary shall clearly set forth the Secretary's views of critical needs in education and the most effective manner in which the nation and the Federal Government may address such needs.

(3) The Center shall develop and enforce standards designed to protect the confidentiality of persons in the collection, reporting, and publication of data under this section. This subparagraph shall not be construed to protect the confidentiality of information about institutions, organizations, and agencies receiving grants from or having contracts with the Federal Government.

(4)(A)[1] Except as provided in this section, no person may—

(i) use any individually identifiable information furnished under the provisions of this section for any purpose other than statistical purposes for which it is supplied;

(ii) make any publication whereby the data furnished by any particular person under this section can be identified; or

(iii) permit anyone other than the individuals authorized by the Commissioner to examine the individual reports; or

(B) No department, bureau, agency, officer, or employee of the Government, except the Commissioner of Education Statistics in carrying out the purposes of this section, shall require, for any reason, copies of reports which have been filed under this section with the Center for Education Statistics or retained by any individual respondent. Copies of such reports which have been so retained or filed with the Center or any of its employees or contractors or agents shall be immune from legal process, and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding. This subsection shall only apply to individually identifiable data (as defined in subparagraph (E)).[2]

(C) Whoever, being or having been an employee or staff member appointed under the authority of the Commissioner or in accordance with this section of the Act, having taken and subscribed the oath of office, or having sworn to observe the limitations imposed by subsection (a), knowingly publishes or communicates any individually identifiable information (as defined in subparagraph (E)), the disclosure of which is prohibited under the provisions of subparagraph (A), and which comes into his or her possession by reason of employment (or otherwise providing services) under the provisions of this section, shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(D) The Commissioner may utilize temporary staff, including employees of Federal, State, or local agencies or instrumentalities including local education agencies, and employees of private organizations to assist the Center in performing the work

[1] So in original. Should be full measure. See P.L. 100-297, sec. 3001(m), 102 Stat. 335.
[2] So in original. Probably should be subparagraph "(F)".

authorized by this section, but only if such temporary staff is sworn to observe the limitations imposed by this section.

(E) No collection of information or data acquisition activity undertaken by the Center shall be subject to any review, coordination or approval procedure except as required by the Director of the Office of Management and Budget under the rules and regulations established pursuant to chapter 35 of title 44, United States Code.

(F) For the purposes of this section—

(i) the term "individually identifiable information" means any record, response form, completed survey or aggregation thereof from which information about individual students, teachers, administrators or other individual persons may be revealed;

(ii) the term "report" means a response provided by or about an individual to an inquiry from the Center and does not include a statistical aggregation from which individually identifiable information cannot be revealed; and

(iii) as used in clause (i), the term "persons" does not include States, local educational agencies, or schools.

(G)(i) This paragraph shall not apply to—

(I) the survey required by section 1303(c) of the Higher Education Amendments of 1986; or

(II) to any longitudinal study concerning access, choice, persistence progress, or attainment in postsecondary education.

(ii) Any person, except those sworn to observe the limitation of this subsection, who uses any data as described in clause (i) provided by the Center, in conjunction with any other information or technique (including de-encryption), to identify any individual student, teacher, administrator, or other person and who discloses, publishes, or uses for a purpose other than that for which it was collected, or who otherwise violates clause (i) or (ii) of subparagraph (A), shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

(iii) No employee or staff member of the Center or of an institution of higher education may be found criminally liable under subparagraph (C), based on a violation of subparagraph (A) or clause (i), if such employee or staff member has taken reasonable precautions, consistent with the purpose of this section, to ensure the confidentiality of data made available to the public.

(H) Nothing in this paragraph shall restrict the right of the Comptroller General of the United States to gain access to any reports or other records, including information identifying individuals, in the Center's possession; except that the same restrictions on disclosure that apply to the Center under subparagraphs (B) and (G) shall apply to the General Accounting Office.

(e)(1) The Center is authorized to furnish transcripts or copies of tables and other statistical records and make special statistical compilations and surveys for State and local officials, public and private organizations, and individuals. The Center shall provide State and local educational agencies opportunities to suggest the development of particular compilations of statistics, surveys, and

analyses that would assist those educational agencies. The Center shall furnish such special statistical compilations and surveys as the Committees on Labor and Human Resources and on Appropriations of the Senate and the Committees on Education and Labor and on Appropriations of the House of Representatives may request. Such statistical compilations and surveys, other than those carried out pursuant to the preceding sentence, shall be made subject to the payment of the actual or estimated cost of such work. In the case of nonprofit organizations or agencies, the Secretary may engage in joint statistical projects, the cost of which shall be shared equitably as determined by the Secretary: *Provided*, That the purposes of such projects are otherwise authorized by law. All funds received in payment for work or services described in this paragraph shall be deposited in a separate account which may be used to pay directly the costs of such work or services, to repay appropriations which initially bore all or part of such costs, or to refund excess sums when necessary.

(2)(A) The Center shall participate with other Federal agencies having a need for educational data in forming a consortium for the purpose of providing direct joint access with such agencies to all educational data received by the Center through automated data processing. The Library of Congress, General Accounting Office, and the Committees on Labor and Human Resources and Appropriations of the Senate and the Committees on Education and Labor and Appropriations of the House of Representatives shall, for the purposes of this subparagraph, be considered Federal agencies.

(B) The Center shall, in accordance with regulations published for the purpose of this paragraph, provide all interested parties, including public and private agencies and individuals, direct access to data collected by the Center for purposes of research and acquiring statistical information.

(3)[1] In carrying out any authorized responsibilities under this section, the Commissioner may enter into contracts under regular competitive procedures of the Federal Government or other financial arrangements. Contracts or financial arrangements may also include sole source contracts with States, additional institutions, organizations performing international studies, and associations that are nationally representative of a wide variety of States or nonpublic schools. The Commissioner shall submit annually a report to the appropriate committees of the Congress, listing each sole source contract, its purpose, and the reasons why competitive bidding was not feasible in each such instance.

(4) The Commissioner is authorized to prepare and publish such information and documents as may be of value in carrying out the purposes of this section. Periodically, the Commissioner shall issue a regular schedule of publications.

(5) In addition to the condition of education report under subsection (d), the Commissioner is authorized to make special reports on particular subjects whenever required to do so by

[1] So in original. Margin should be full measure for paragraphs (3)-(9).

the President or either House of Congress or when considered appropriate by the Commissioner.

(6) The Commissioner is authorized to use information collected by other offices in the Department of Education and by other executive agencies and to enter into interagency agreements for the collection of statistics for the purposes of this section. The Commissioner is authorized to arrange with any agency, organization, or institution for the collection of statistics for the purposes of this section and may assign employees of the Center to any such agency, organization, or institution to assist in such collection.

(7) The Commissioner is authorized to use the statistical method known as sampling to carry out this section. Data may be collected from States, local educational agencies, schools, libraries, administrators, teachers, students, the general public, and such other individuals, persons, organizations, agencies, and institutions as the Commissioner may consider appropriate.

(8) To assure the technical quality and the coordination of statistical activities of the Department, the Commissioner shall provide technical assistance to Department offices that gather data for statistical purposes. Such assistance may include a review of and advice on data collection plans, survey designs and pretests, the management of data, and the quality of reporting of data.

(9) The Commissioner is authorized to—

(A) select, appoint, and employ such officers and employees as may be necessary to carry out the functions of the Center, subject to the provisions of title 5, United States Code (governing appointments in the competitive service), and the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates); and

(B) notwithstanding any other provision of this Act, to obtain services as authorized by section 3109 of title 5, United States Code, at a rate not to exceed the equivalent daily rate payable for grade GS–18 of the General Schedule under section 5332 of such title.

(f)(1)[1] There are authorized to be appropriated for the purposes of this section (including salaries and expenses) $42,323,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990, 1991, 1992, and 1993.

(2)[2] The Commissioner may contract with States to carry out subsection (h). Such contracts may not exceed the additional cost to the State—

(A) of meeting the information and data gathering requirements in compliance with such subsection; or

[1] Section 405(f)(1)(D) reserves a minimum amount to carry out subsection (i), relating to the National Assessment of Educational Progress, in each fiscal year in which amounts appropriated to carry out section 405 and this section exceed amounts appropriated for such purpose in the fiscal year 1986.

[2] So in original. Margins should conform to (f)(1). Subparagraphs (A) and (B) should be indented 2 ems only.

(B) for compliance with related efforts of the National Center for Education Statistics to achieve comparable and uniform data consistent with the purposes of this subsection.

(g)(1) In addition to its other responsibilities, the Center shall collect uniform data from the States on the financing of elementary and secondary education. Each State receiving funds under the Education Consolidation and Improvement Act of 1981 shall cooperate with the Center in this effort.

(2)[1] In addition to other duties of the Commissioner under this section, it shall be the responsibility of the Commissioner to issue regular public reports to the President and Congress on dropout and retention rates, results of education, supply and demand of teachers and school personnel, libraries, financial aid and on such other education indicators as the Commissioner determines to be appropriate.

(3) The Commissioner shall establish a special study panel to make recommendations concerning the determination of education indicators for study and report under paragraph (2). Not more than 18 months after the date of the enactment of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the Commissioner shall submit the report of the panel to the appropriate committees of the Congress. The panel shall cease to exist 6 months after the date of such submission.

(4)(A) The Center shall conduct an annual national survey of dropout and retention rates as an education indicator.

(B) The Commissioner shall appoint a special task force to develop and test an effective methodology to accurately measure dropout and retention rates. Not later than 1 year after the date of enactment of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, the task force shall submit a report of its recommendations, including procedures for implementation of such recommendations, to the Commissioner and the appropriate committees of the Congress.

(C) On the second[2] Tuesday after Labor Day of 1989 and on each such Tuesday thereafter, the Center shall submit a report to the appropriate committees of the Congress of the dropout and retention rate prevailing on March 30 of each such year.

(5)(A) As of March 30, 1990, and not less than every 3 years thereafter, the Center shall conduct a national study and survey of financial aid in accordance with the provisions of section 1303(c) of the Higher Education Amendments of 1986. The Center shall submit a report to the appropriate committees of the Congress concerning the findings of such study[3]

(B) Concurrent with each survey, the Center.[4] shall conduct longitudinal studies of freshman and graduating students concerning access, choice, persistence progress, curriculum and attainment. Such studies shall evaluate such students at 3 points over a 6-year interval.

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[1] So in original. Margin should be full measure for paragraphs (2)-(8).

[2] So in law. Probably should read "On the second Tuesday after Labor Day of 1989 and on the second Tuesday after Labor Day of each succeeding year".

[3] So in original. Probably should be followed by a period.

[4] So in original. Period probably should be deleted.

(6) On April 1, 1993, and every 10 years thereafter, the Center shall submit a report to the appropriate committees of the Congress concerning the social and economic status of children who reside in the areas served by different local educational agencies. Such report shall be based on data collected during the most recent decennial census.

(7) The Center shall conduct a study of a statistically relevant sample of students enrolled in elementary and secondary school and postsecondary education training concerning educational progress, intellectual development, and economic prosperity. The study shall collect data on participation in higher education, including enrollment, persistence, and attainment. Such study shall evaluate such students by such criteria at 2-year intervals. As of February 1, 1989, and every 8 years thereafter, the Commissioner shall select a sample of students enrolled in school for this study.

(8) The Center with the assistance of State library agencies, shall develop and support a cooperative system of annual data collection for public libraries. Participation shall be voluntary; however, all States should be encouraged to join the system. Attention should be given to insuring[1] timely, consistent and accurate reporting.

(9) The National Center for Education Statistics shall conduct a study on the effects of higher standards prompted by school reform efforts on student enrollment and persistence. The study shall examine academic achievement, and graduation rates of low-income, handicapped, limited English proficient, and educationally disadvantaged students.

(h)(1) There is established within the Center a National Cooperative Education Statistics System (hereafter[2] referred to in this subsection as the "System"). The purpose of the System is to produce and maintain, with the cooperation of the States, comparable and uniform educational information and data that are useful for policymaking at the Federal, State, and local level.

(2) Each State that desires to participate in the system shall—

(A) first develop with the Center the information and data-gathering requirements that are needed to report on the condition and progress of elementary and secondary education in the United States, such as information and data on—

(i) schools and school districts;

(ii) students and enrollments, including special populations;

(iii) the availability and use of school libraries and their resources;

(iv) teachers, librarians, and school administrators;

(v) the financing of elementary and secondary education;

(vi) student outcomes, including scores on standardized tests and other measures of educational achievement; and

(vii) the progress of education reform in the States and the Nation; and

[1] So in original. Probably should be "ensuring".
[2] So in original. "Hereafter" probably should be striken.

(B) then enter into an agreement with the Center for that fiscal year to comply with those information and data-gathering requirements.

(3) To establish and maintain the system,[1] the Commissioner—

(A) shall—

(i) provide technical assistance to the States regarding the collection, maintenance, and use of the System's data, including the timely dissemination of such data; and

(ii) to the extent possible, implement standard definitions and data collection procedures; and

(B) may—

(i) directly, or through grants, cooperative agreements, or contracts, conduct research, development, demonstration, and evaluation activities that are related to the purposes of the System; and

(ii) prescribe appropriate guidelines to ensure that the statistical activities of the States participating in the System produce data that are uniform, timely, and appropriately accessible.

(i)(1) With the advice of the National Assessment Governing Board established by paragraph (5)(a)(i), the Commissioner shall carry out, by grants, contracts, or cooperative agreements with qualified organizations, or consortia thereof, a National Assessment of Educational Progress. The National Assessment of Educational Progress shall be placed in the National Center for Education Statistics and shall report directly to the Commissioner for Educational Statistics. The purpose of the National Assessment is the assessment of the performance of children and adults in the basic skills of reading, mathematics, science, writing, history/geography, and other areas selected by the Board.

(2)(A) The National Assessment shall provide a fair and accurate presentation of educational achievement in skills, abilities, and knowledge in reading, writing, mathematics, science, history/geography, and other areas specified by the Board, and shall use sampling techniques that produce data that are representative on a national and regional basis and on a State basis pursuant to subparagraphs (C)(i) and (C)(ii). In addition, the National Assessment shall—

(i) collect and report data on a periodic basis, at least once every 2 years for reading and mathematics; at least once every 4 years for writing and science; and at least once every 6 years for history/geography and other subject areas selected by the Board;

(ii) collect and report data every 2 years on students at ages 9, 13, and 17 and in grades 4, 8, and 12;

(iii) report achievement data on a basis that ensures valid reliable trend reporting;[3]

(iv) incl[illegible]e information on special groups.

(B) In carrying out the provisions of subparagraph (A), the Secretary and the Board appointed under paragraph (5) shall assure that at least 1 of the subject matters in each of the 4 and 6 year cycles

[1] So in original. Probably should be capitalized.
[2] So in original. Probably should be "(5)(A)(i)".
[3] So in original. Probably should be "; and".

described in subparagraph (A)(i) will be included in each 2 year cycle Assessment.

(C)(i) The National Assessment shall develop a trial mathematics assessment survey instrument for the eighth grade and shall conduct a demonstration of the instrument in 1990 in States which wish to participate, with the purpose of determining whether such an assessment yields valid, reliable State representative data.

(ii) The National Assessment shall conduct a trial mathematics assessment for the fourth and eighth grades in 1992 and, pursuant to subparagraph (6)(D),[1] shall develop a trial reading assessment to be administered in 1992 for the fourth grade in States which wish to participate, with the purpose of determining whether such an assessment yields valid, reliable State representative data.

(iii) The National Assessment shall ensure that a representative sample of students participate in such assessments.

(iv) No State may agree to participate in the demonstration described in this subsection without full knowledge of the process for consensus decisionmaking on objectives to be tested, required in paragraph (6)(E), and of assessment demonstration standards for sampling, test administration, test security, data collection, validation and reporting. States wishing to participate shall sign an agreement developed by the Commissioner. A participating State shall review and give permission for release of results from any test of its students administered as a part of this demonstration prior to the release of such data. Refusal by a State to release its data shall not restrict the reporting of data from other States that have approved the release of such data.

(v) The Commissioner shall provide for an independent evaluation conducted by a nationally recognized organization (such as the National Academy of Sciences or the National Academy of Education) of the pilot programs to assess the feasibility and validity of assessments and the fairness and accuracy of the data they produce. The report shall also describe the technical problems encountered and a description about what was learned about how to best report data from the National Assessment of Educational Progress. The results of this report will be provided to the Congress and to States which participated in assessments pursuant to paragraph (C) (i) and (ii) within 18 months of the time such assessments were conducted.

(D)(i)[2] The National Assessment shall have the authority to develop and conduct, upon the direction of the Board and subject to the availability of appropriations, assessments of adult literacy.

(3)(A) The National Assessment shall not collect any data that are not directly related to the appraisal of educational performance, achievements, and traditional demographic reporting variables, or to the fair and accurate presentation of such information.

(B) The National Assessment shall provide technical assistance to States, localities, and other parties that desire to participate in the assessment to yield additional information described in paragraph (2).

[1] So in original. Probably should be "paragraph (6)(D)".
[2] So in original.

(4)(A) Except as provided in subparagraph (B), the public shall have access to all data, questions, and test instruments of the National Assessment.

(B)(i) The Commissioner shall ensure that all personally identifiable information about students, their educational performance, and their families and that information with respect to individual schools remain confidential, in accordance with section 552a of title 5, United States Code.

(ii) Notwithstanding any other provision of the law, the Secretary may decline to make available to the public for a period not to exceed 10 years following their initial use cognitive questions that the Secretary intends to reuse in the future.

(C) The use of National Assessment test items and test data employed in the pilot program authorized in subsection (2)(C) to rank, compare, or otherwise evaluate individual students, schools, or school districts is prohibited.

(5)(A)(i) There is established the National Assessment Governing Board (hereafter [1] in this section referred to as the "Board").

(ii) The Board shall formulate the policy guidelines for the National Assessment.

(B) The Board shall be appointed by the Secretary in accordance with this subparagraph and subparagraphs (C), (D), and (E). The Board shall be composed of—

(i) two Governors, or former Governors, who shall not be members of the same political party;

(ii) two State legislators, who shall not be members of the same political party;

(iii) two chief State school officers;

(iv) one superintendent of a local educational agency;

(v) one member of a State board of education;

(vi) one member of a local board of education;

(vii) three classroom teachers representing the grade levels at which the National Assessment is conducted;

(viii) one representative of business or industry;

(ix) two curriculum specialists;

(x) two testing and measurement experts;

(xi) one nonpublic school administrator or policymaker;

(xii) two school principals, one elementary and one secondary;

(xiii) three additional members who are representatives of the general public, including parents.

The Assistant Secretary for Educational Research and Improvement shall serve as an ex officio member of the Board as a nonvoting member.

(C)(i) The Secretary and the Board shall ensure at all times that the membership of the Board reflects regional, racial, gender and cultural balance and diversity and that it exercises its independent judgment, free from inappropriate influences and special interests.

(ii) In the exercise of its functions, powers, and duties, the Board shall hire its own staff and shall be independent of the Secretary and the other offices and officers of the Department of Education.

[1] So in original. "Hereafter" probably should be stricken.

(iii) The Secretary may appoint, at the direction of the Board, for terms not to exceed 3 years, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, not more than 6 technical employees to administer this subsection who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(D)(i) The members of the Assessment Policy Committee, serving on the date of enactment of the National Assessment of Educational Progress Improvement Act, shall become members of the Board for the remainder of the terms of the appointment to the Assessment Policy Committee.

(ii) To complete the initial membership of the Board, the Secretary shall appoint members of the Board as necessary in the categories described in subparagraph (B) for which there are no members continuing from the Assessment Policy Committee on the date of enactment of the National Assessment of Educational Progress Improvement Act. The Secretary shall appoint such members from among nominees furnished by the Governors, chief State school officers, education associations and organizations, the National Academy of Sciences, the National Academy of Education, parent organizations, and learned societies.

(iii) As vacancies occur, new members of the Board shall be appointed by the Secretary from among individuals who are nominated by the Board after consultation with representatives of the groups listed in subparagraph (B). For each vacancy the Board shall nominate at least 3 individuals who, by reason of experience or training, are qualified in that particular Board vacancy.

(E) Members of the Board appointed in accordance with this paragraph shall serve for terms not to exceed 4 years which shall be staggered, as determined by the Secretary, subject to the provisions of subparagraph (D)(i). Any appointed member of the Board who changes status under subparagraph (B) during the term of the appointment of the member may continue to serve as a member until the expiration of that term.

(6)(A) In carrying out its functions under this subsection, the Board shall be responsible for—

(i) selecting subject areas to be assessed (consistent with paragraph (2)(A));

(ii) identifying appropriate achievement goals for each age and grade in each subject area to be tested under the National Assessment;

(iii) developing assessment objectives;

(iv) developing test specifications;

(v) designing the methodology of the assessment;

(vi) developing guidelines and standards for analysis plans and for reporting and disseminating results;

(vii) developing standards and procedures for interstate, regional and national comparisons; and

(viii) taking appropriate actions needed to improve the form and use of the National Assessment.

(B) The Board may delegate any functions described in subparagraph (A) to its staff.

(C) The Board shall have final authority on the appropriateness of cognitive items.

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(D) The Board shall take steps to ensure that all items selected for use in the National Assessment are free from racial, cultural, gender, or regional bias.

(E) Each learning area assessment shall have goal statements devised through a national consensus approach, providing for active participation of teachers, curriculum specialists, local school administrators, parents and concerned members of the general public.

(F) The Secretary shall report to the Board at regular intervals of the Department's action to implement the decisions of the Board.

(G) Any activity of the Board or of the organization described in paragraph (1), shall be subject to the provisions of this subsection.

(7)(A) Not to exceed 10 percent of the funds available for this subsection may be used for administrative expenses (including staff, consultants and contracts authorized by the Board) and to carry out the functions described in paragraph (6)(A).

(B) For the purposes of its administrative functions, the Board shall have the authorities authorized by the Federal Advisory Committee Act and shall be subject to the open meeting provisions of that law.

(8)(A) Participation in the National and Regional Assessments by State and local educational agencies shall be voluntary.

(B) Participation in assessments made on a State basis shall be voluntary. The Secretary shall enter into an agreement with any State which desires to carry out an assessment for the State under this subsection. Each such agreement shall contain provisions designed to assure—

(i) that the State will participate in the assessment;

(ii) that the State will pay from non-Federal sources the non-Federal share of participation; and

(iii) that the State agrees with the terms and conditions specified in subsection (a)(2)(C)(iv).

(C)(i) For each fiscal year, the non-Federal share for the purpose of clause (ii) of subparagraph (B) shall be the cost of conducting the assessment in the State including the cost of administering the assessment at the school level for all schools in the State sample and the cost of coordination within the State.

(ii) The non-Federal share of payments under this paragraph may be in cash or in kind.

(9)(A) The Commissioner shall provide for continuing reviews of the National Assessment, including validation studies by the National Center for Education Statistics and solicitation of public comment on the conduct and usefulness of the National Assessment. The Secretary shall report to the Congress, the President, and the Nation on the findings and recommendations of such reviews. The Commissioner shall consider the findings and recommendations in designing the competition to select the organization through which the Office carries out the National Assessment.

(B) The Commissioner shall, not later than 6 months after the date of enactment of the National Assessment of Educational Progress Improvement Act, publish a report setting forth plans for the collection of data for the 1990 assessment and plans for including other subject areas in the 1992 and later assessments. The report shall include methods by which the results of the National

Assessment of Educational Progress may be reported so that the results are more readily available and more easily understood by educators, policymakers, and the general public, and methods by which items will be reviewed to identify and exclude items which reflect racial, cultural, gender, or regional bias. The report shall be developed after consultation with educators, State education officials, members of the Board appointed under paragraph (5), and the general public.

(C) The report required by this paragraph shall be submitted to the Congress and made available to the public. The appropriate authorizing committees of the Congress may request the Secretary to modify the plan contained in the report. The Secretary shall take such actions as may be appropriate to carry out the recommendations contained in the report.

(j) For purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

(20 U.S.C. 1221e–1) Enacted August 21, 1974, P.L. 93–380, sec. 501(a), 88 Stat. 556, 558; amended April 21, 1976, P.L. 94–273, sec. 12(1), 90 Stat. 378; amended October 12, 1976, P.L. 94–482, sec. 401(c), 90 Stat. 2226; sec. 406, 90 Stat. 2231, 2232; sec. 501(q), 90 Stat. 2238; amended Nov. 1, 1978, P.L. 95–561, secs. 1201, 1212(a), (c), 1243(a), 92 Stat. 2333, 2334, 2338, 2341, 2353; see also general reference Oct. 17, 1979, P.L. 96–88, sec. 301, 93 Stat. 677; amended Oct. 19, 1984, P.L. 98–511, secs. 702(b), 704(b), 98 Stat. 2406; amended Oct. 17, 1986, P.L. 99–498, sec. 1402, 100 Stat. 1597; amended June 3, 1987, P.L. 100–50, §24(b), 101 Stat. 363; amended April 28, 1988, P.L. 100–297, secs. 3001, 3403(a), 102 Stat. 331, 344; amended November 16, 1990, P.L. 101–589, sec. 252, 104 Stat. 2894.

RESPONSIBILITY OF STATES TO FURNISH INFORMATION

SEC. 406A. (a) The Commissioner shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program for such fiscal year and specify from which appropriation Act or Acts these funds were available; and

(3) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

(b) On or before March 31 of each year, the Commissioner shall submit to the Committee on Labor and Human Resources of the Senate and to the Committee on Education and Labor of the House of Representatives an analysis of these reports and a compilation of statistical data derived therefrom.

(20 U.S.C. 1221e–1a) Enacted August 21, 1974, P.L. 93–380, sec. 512(a), 88 Stat. 571; amended April 21, 1976, P.L. 94–273, sec. 17, 90 Stat. 379; amended October 12, 1976, P.L. 94–482, sec. 501(f)(2), (f)(3), 90 Stat. 2237; redesignated Nov. 1, 1978, P.L. 95–561, sec. 1231(a)(2), 92 Stat. 2342; see also general reference Oct. 17, 1979, P.L. 96–88, sec. 301, 93 Stat. 677; amended December 8, 1983, P.L. 97–211, sec. 18, 97 Stat. 1417.

AUTHORIZATION OF APPROPRIATIONS FOR SCIENCE EDUCATION PROGRAMS

SEC. 406B. There is authorized to be appropriated to the Secretary of Education for fiscal year 1981—

(1) $2,500,000 for the purpose of carrying out the Pre-College Science Teacher Training program, and

(2) $5,000,000 for the purpose of carrying out the Minority Institutions Science Improvement program transferred to the Secretary from the National Science Foundation by section 304 of the Department of Education Organization Act.

(20 U.S.C. 1221e-1b) Enacted October 3, 1980, P.L. 96-374, sec. 1303, 94 Stat. 1497; amended Nov. 22, 1985, P.L. 99-159, 99 Stat. 903.

AUTHORIZATION OF APPROPRIATIONS FOR SCIENCE IMPROVEMENT PROGRAM

SEC. 406C. There are authorized to be appropriated $5,000 for each of the fiscal years 1985 and 1986 for the purpose of carrying out the Minority Insitutions Science Improvement Program transferred to the Secretary of Education from the National Science Foundation by section 304 of the Department of Education Organization Act.

(20 U.S.C. 1221e-1c) Enacted Nov. 22, 1985, P.L. 99-159, 99 Stat. 903.

RULES FOR EDUCATION OFFICERS OF THE UNITED STATES

SEC. 407. (a) For the purposes of this section, the term "education officer of the United States" means any person appointed by the President pursuant to this part, except members of commissions, councils, and boards.

(b) Each education officer of the United States shall serve at the pleasure of the President.

(c) No education officer of the United States shall engage in any other business, vocation, or employment while serving in the position to which he is appointed; nor may he, except with the express approval of the President in writing, hold any office in, or act in any capacity for, or have any financial interest in, any organization, agency, or institution to which an agency in the Education Division makes a grant or with which any such agency makes a contract or any other financial arrangement.

(d) No person shall hold, or act for, more than one position as an education officer of the United States for more than a 30 day period.

(20 U.S.C. 1221e-2) Enacted August 21, 1974, P.L. 93-380, sec. 502(a)(1), 88 Stat. 559.

GENERAL AUTHORITY OF ADMINISTRATIVE HEADS OF EDUCATION AGENCIES

SEC. 408. (a) Each administrative head of an education agency, in order to carry out functions otherwise vested in him by law or by delegation of authority pursuant to law, is, subject to limitations as may be otherwise imposed by law, authorized—

(1) to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of operation of, and governing the applicable programs administered by the agency of which he is head;

(2) in accordance with those provisions of title 5, United States Code, relating to the appointment and compensation of personnel and subject to such limitations as are imposed in this part, to appoint and compensate such personnel as may be necessary to enable such agency to carry out its functions;

(3) to accept unconditional gifts or donations of services, money, or property (real, personal, or mixed; tangible or intangible);

(4) without regard for section 3648 of the Revised Statutes of the United States (31 U.S.C. 529), to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary for the conduct of such agency;

(5) with funds expressly appropriated for such purpose, to construct such facilities as may be necessary to carry out functions vested in him or in the agency of which he is head, and to acquire and dispose of property; and

(6) to use the services of other Federal agencies and reimburse such agencies for such services.

(b) The administrative head of an education agency shall ensure that, in contracting under the authority of this section for the services of independent persons in the competitive review of grant applications, all such persons are qualified, by education and experience, to perform such services. The qualifications of such persons and the terms of such contracts, other than information which identify such person, shall be readily made available to the public.

(c) Any administrative head of an education agency is, subject to any other limitations on delegations of authority provided by law, authorized to delegate any of his functions under this section to an officer or employee of that agency.

(d) For the purposes of this title, the term "administrative head of an education agency" means the Commissioner and the Director of the National Institute of Education. To the extent that the Assistant Secretary is directly responsible for the administration of a program and to the extent that the Assistant Secretary is responsible for the supervision of the National Center for Education Statistics, the Assistant Secretary shall, for such purposes, be considered within the meaning of such term.

(20 U.S.C. 1221e-3) Enacted August 21, 1974, P.L. 93-380, sec. 502(a)(1), 88 Stat. 559, 560; amended Nov. 1, 1978, P.L. 95-561, secs. 1243(b), (c), 1244, 92 Stat. 2353; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

EDUCATION IMPACT STATEMENT

SEC. 409. Notwithstanding any other provision of law, no regulation affecting any institution of higher education in the United States, promulgated on or after the date of enactment of this Act, shall become effective unless such agency causes to be published in the Federal Register a copy of such proposed regulation together with an educational impact assessment statement which shall determine whether any information required to be transmitted under such regulation is already being gathered by or is available from

any other agency or authority of the United States. Notwithstanding the exception provided under section 553(b) of title 5, United States Code, such statement shall be based upon the record established under the provisions of section 553 of title 5, United States Code, compiled during the rulemaking proceeding regarding such regulation.

(20 U.S.C. 1221e-4) Enacted October 3, 1980, P.L. 96-374, sec. 1306, 94 Stat. 1498.

PART B—APPROPRIATIONS AND EVALUATIONS

Subpart 1—Appropriations

ADVANCE FUNDING

SEC. 411. To the end of affording the responsible State, local, and Federal officers concerned adequate notice of available Federal financial assistance for education, appropriations for grants, contracts, or other payments under any applicable program are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding that its initial application under such program will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(20 U.S.C. 1223) Enacted Jan. 2, 1968, P.L. 90-247, sec. 403, 81 Stat. 814; amended April 13, 1970, P.L. 92-230, sec. 401(a)(4), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 506(a)(1)(C), 88 Stat. 562.

AVAILABILITY OF APPROPRIATIONS ON ACADEMIC OR SCHOOL YEAR BASIS

SEC. 412. (a) Appropriations for any fiscal year for grants, loans, contracts, or other payments to educational agencies or institutions under any applicable program may, in accordance with regulations of the Secretary, be made available for expenditure by the agency or institution concerned on the basis of an academic or school year differing from such fiscal year.

(b) Notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection, any funds from appropriations to carry out any programs to which this title is applicable during any fiscal year which are not obligated and expended by educational agencies or institutions prior to the beginning of the fiscal year succeeding the fiscal year for which such funds were appropriated shall remain available for obligation and expenditure by such agencies and institutions during such succeeding fiscal year.

(2) Any funds under any applicable program which, pursuant to paragraph (1), are available for obligation and expenditure in the year succeeding the fiscal year for which they were appropriated shall be obligated and expended in accordance with—

(A) the Federal statutory and regulatory provisions relating to such program which are in effect for such succeeding fiscal year, and

(B) any program plan or application submitted by such educational agencies or institutions for such program for such succeeding fiscal year.

(c) If any funds appropriated to carry out any applicable program are not obligated pursuant to a spending plan submitted in accordance with section 3679(d)(2) of the Revised Statutes and become available for obligation after the institution of a judicial proceeding seeking the release of such funds, then such funds shall be available for obligation and expenditure until the end of the fiscal year which begins after the termination of such judicial proceeding.

(20 U.S.C. 1225) Enacted Jan. 2, 1968, P.L. 90-247, sec. 405, 81 Stat. 815; amended April 13, 1970, P.L. 91-230, sec. 401(a) (5), (7), (8), 84 Stat. 165; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, redesignated and amended, August 21, 1974, P.L. 93-380, sec. 506(a)(1), 88 Stat. 562, 563; amended April 21, 1976, P.L. 94-273, sec. 3(12), 90 Stat. 376.; amended Sept. 24, 1977, P.L. 95-112, sec. 5, 91 Stat. 912; amended Nov. 1, 1978, P.L. 95-561, sec. 1245, 92 Stat. 2354.

AVAILABILITY OF APPROPRIATIONS

SEC. 413. Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this title, funds appropriated for any fiscal year to carry out any of the programs to which this title is applicable shall remain available for obligation and expenditure until the end of such fiscal year.

(20 U.S.C. 1226) Enacted Oct. 16, 1968, P.L. 90-576, sec. 301(b), 82 Stat. 1094; amended April 13, 1970, P.L. 91-230, sec. 401(a)(9), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 506(a)(2), 88 Stat. 563.

CONTINGENT EXTENSION OF PROGRAMS

SEC. 414.[1] (a) Unless the Congress in the regular session which ends prior to the beginning of the terminal fiscal year—

(1) of the authorization of appropriations for an applicable program; or

(2) of the duration of an applicable program;

either—

(A) has passed or has formally rejected legislation which would have the effect of extending the authorization or duration (as the case may be) of that program; or

(B) by action of either the House of Representatives or the Senate, approves a resolution stating that the provisions of this section shall no longer apply to such program;

such authorization or duration is hereby automatically extended for—

(i) two additional fiscal years for any applicable program authorized to be included in the Appropriation Act for the fiscal year preceding the fiscal year for which appropriations are available for obligation, or

(ii) one additional fiscal year for any other applicable program

[1] Section 327 of Part B of Title III of P.L. 94-482 provides as follows:
The provisions of section 414 of the General Education Provisions Act, relating to the contingent extension of applicable programs, shall not apply to the Indochina Refugee Children Assistance Act of 1976, or to any program of financial assistance for educational purpose for Indochinese refugee children.

The amount appropriated for each additional year shall not exceed the amount which the Congress could, under the terms of the law for which the appropriation is made, have appropriated for such program during such terminal year.

(b)(1) For the purposes of clause (A) of subsection (a), the Congress shall not have been deemed to have passed legislation unless such legislation becomes law.

(2) In any case where the Commissioner is required under an applicable statute to carry out certain acts or make certain determinations which are necessary for the continuation of an applicable program, if such acts or determinations are required during the terminal year of such program, such acts and determinations shall be required during any fiscal year in which that part of subsection (a) which follows clause (B) thereof is in operation.

(20 U.S.C. 1226a) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(2), 88 Stat. 563; amended October 3, 1980, P.L. 96-374, sec. 1301, 94 Stat. 1496; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 3, 1980, P.L. 96-374, sec. 1301, 94 Stat. 1496.

PAYMENTS

SEC. 415. Payments pursuant to grants or contracts under any applicable program may be made in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Commissioner may determine.

(20 U.S.C. 1226a-1) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(1), 92 Stat. 2342; amended by general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

Subpart 2—Planning and Evaluation of Federal Education Activities

PROGRAM PLANNING AND EVALUATION

SEC. 416. Sums appropriated pursuant to section 400(d) may include for any fiscal year for which appropriations are otherwise authorized under any applicable program not to exceed $25,000,000 which shall be available to the Secretary, in accordance with regulations prescribed by him, for expenses, including grants, contracts, or other payments, for (1) planning for the succeeding year for any such program, and (2) evaluation of such programs.

(20 U.S.C. 1226b) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(3)(C), 88 Stat. 563, 564.

ANNUAL EVALUATION REPORTS

SEC. 417. (a) Not later than December 31 of each year, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs (including compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs) in achieving their legislated purposes together with recommenda-

tions relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes. In the case of any evaluation report evaluating specific programs and projects, such report shall—

(A) set forth goals and specific objectives in qualitative and quantitative terms for all programs and projects assisted under the applicable program concerned and relate those goals and objectives to the purposes of such program;

(B) contain information on the progress being made during the previous fiscal year toward the achievement of such goals and objectives;

(C) describe the cost and benefits of the applicable program being evaluated during the previous fiscal year and identify which sectors of the public receive the benefits of such program and bear the costs of such program;

(D) contain plans for implementing corrective action and recommendations for new or amended legislation where warranted;

(E) contain a listing identifying the principal analyses and studies supporting the major conclusions and recommendations in the report; and

(F) be prepared in concise summary form with necessary detailed data and appendices, including tabulations of available data to indicate the effectiveness of the programs and projects by the sex, race, and age of its beneficiaries.

(2)[1] Repealed.

(b) Each evaluation report submitted pursuant to subsection (a) shall contain: (1) a brief description of each contract or grant for evaluation of any program (whether or not such contract or grant was made under section 416) any part of the performance of which occurred during the preceding year, (2) the name of the firm or individual who is to carry out the evaluation, and (3) the amount to be paid under the contract or grant.

(20 U.S.C. 1226c) Enacted August 21, 1974, P.L. 93-380, sec. 506(a)(3)(C), 88 Stat. 564; amended Nov. 1, 1978, P.L. 95-561, sec. 1246(a), (b), 92 Stat. 2354; amended Aug. 6, 1979, P.L. 96-46, sec. 4(b), 93 Stat. 342 (effective Oct. 1, 1978); amended October 3, 1980, P.L. 96-374, sec. 1305, 94 Stat. 1497; amended October 19, 1984, P.L. 98-511, sec. 705, 98 Stat. 2406.

RENEWAL EVALUATION REPORTS

SEC. 418. [Repealed by section 106(a) of the Congressional Reports Elimination Act of 1980.]

EVALUATION BY THE COMPTROLLER GENERAL

SEC. 419. (a) The Comptroller General of the United States shall review, audit, and evaluate any Federal education program upon request by a committee of the Congress having jurisdiction of the statute authorizing such program or, to the extent personnel are available, upon request by a member of such committee. Upon such request, he shall (1) conduct studies of statutes and regulations governing such program; (2) review the policies and practices of Feder-

[1] Paragraph (2) of section 417(a) was repealed Aug. 6, 1979, P.L. 96-46, sec. 4(b), 93 Stat. 342 (effective Oct. 1, 1978).

al agencies administering such program; (3) review the evaluation procedures adopted by such agencies carrying out such program; and (4) evaluate particular projects or programs. The Comptroller General shall compile such data as are necessary to carry out the preceding functions and shall report to the Congress at such times as he deems appropriate his findings with respect to such program and his recommendations for such modifications in existing laws, regulations, procedures and practices as will in his judgment best serve to carry out effectively and without duplication the policies set forth in education legislation relative to such program.

(b) In carrying out his responsibilities as provided in subsection (a), the Comptroller General shall give particular attention to the practice of Federal agencies of contracting with private firms, organizations, and individuals for the provision of a wide range of studies and services (such as personnel recruitment and training, program evaluation, and program administration) with respect to Federal education programs, and shall report to the heads of the agencies concerned and to the Congress his findings with respect to the necessity for such contracts and their effectiveness in serving the objectives established in education legislation.

(c) In addition to the sums authorized to be appropriated under section 400(d), there are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(20 U.S.C. 1227) Enacted June 23, 1972, P.L. 92-318, sec. 304, 86 Stat. 333; amended Aug. 21, 1974, P.L. 93-380, sec. 506(a)(3)(A) and (B), 88 Stat. 563.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. 420. No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except for funds appropriated pursuant to title I of the Act of September 30, 1950 (Public Law 874, 81st Congress), but not including any portion of such funds as are attributable to children counted under subparagraph (C) of section 3(d)(2) or section 403(1)(C) of that Act.

(20 U.S.C. 1228) Enacted August 21, 1974, P.L. 93-380, sec. 252, 88 Stat. 519.

PART C—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING THE OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS; GENERAL AUTHORITY OF THE COMMISSIONER OF EDUCATION

APPLICABILITY

SEC. 421. The provisions of this part (except as otherwise provided) shall apply to any program for which the Commissioner has administrative responsibility, as specified by law or by delegation of authority pursuant to law.

(20 U.S.C. 1230) Enacted August 21, 1974, P.L. 93-380, sec. 507(a), 88 Stat. 565; amended October 12, 1976, P.L. 94-482, sec. 404(a), 90 Stat. 2230; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

Subpart 1—General Authority

ADMINISTRATION OF EDUCATION PROGRAMS

SEC. 421A. (a) The Commissioner is authorized to delegate any of his functions under any applicable program, except the making of regulations and the approval of State plans, to any officer or employee of the Office of Education.

(b) In administering any applicable program, the Commissioner is authorized to utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or institution in accordance with appropriate agreements, and to pay for such services either in advance or by way of reimbursement, as may be agreed upon.

(c)[1] (1)(A) Except in the case of a law which—

(i) authorizes appropriations for carrying out, or controls the administration of, an applicable program, or

(ii) is enacted in express limitation of the provisions of this paragraph,

no provision of any law shall be construed to authorize the consolidation of any applicable program with any other program. Where the provisions of law governing the administration of an applicable program permit the packaging or consolidation of applications for grants or contracts to attain simplicity or effectiveness of administration, nothing in this subparagraph shall be deemed to interfere with such packaging or consolidation.

(B) No provision of any law which authorizes an appropriation for carrying out, or controls the administration of, an applicable program shall be construed to authorize the consolidation of any such program with any other program unless provision for such a consolidation is expressly made thereby.

(C) For the purposes of this subsection, the term "consolidation" means any agreement, arrangement, or the other procedure which results in—

(i) the commingling of funds derived from one appropriation with those derived from another appropriation,

(ii) the transfer of funds derived from an appropriation to the use of an activity not authorized by the law authorizing such appropriation,

(iii) the use of practices or procedures which have the effect of requiring, or providing for, the approval of an application for funds derived from different appropriations according to any criteria other than those for which provision is made (either expressly or implicitly) in the law which authorizes the appropriation of such funds, or this title, or

(iv) as a matter of policy the making of a grant or contract involving the use of funds derived from one appropriation dependent upon the receipt of a grant or contract involving the use of funds derived from another appropriation.

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[1] Section 302(c) of P.L. 92-318 provides as follows:

"(c) The provisions of section 421(c) of the General Education Provisions Act shall be effective upon the date of enactment of this Act. No provision of any law which is inconsistent with such section 421(c) shall be effective nor shall any such provision control to the extent of such inconsistency, unless such a law is enacted after the date of enactment of this Act."

(2)(A) No requirement or condition imposed by a law authorizing appropriations for carrying out any applicable program, or controlling the administration thereof, shall be waived or modified, unless such a waiver or modification is expressly authorized by such law or by a provision of this title or by a law expressly limiting the applicability of this paragraph.

(B) There shall be no limitation on the use of funds appropriated to carry out any applicable program other than limitations imposed by the law authorizing the appropriation or a law controlling the administration of such program; nor shall any funds appropriated to carry out an applicable program be allotted, apportioned, allocated, or otherwise distributed in any manner or by any method different from that specified in the law authorizing the appropriation.

(3) No person holding office in the executive branch of the Government shall exercise any authority which would authorize or effect any activity prohibited by paragraph (1) or (2).

(4) The transfer of any responsibility, authority, power, duty, or obligation subject to this title, from the Commissioner to any other officer in the executive branch of the Government, shall not affect the applicability of this title with respect to any applicable program.

(20 U.S.C. 1231) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 321; amended June 23, 1972, P.L. 92-318, sec. 302(a), 86 Stat. 332, 333; heading of sec. 421 redesignated June 23, 1972, P.L. 92-318, sec. 302(b), 86 Stat. 333; redesignated August 21, 1974, P.L. 93-380, sec. 507(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COLLECTION AND DISSEMINATION OF INFORMATION

SEC. 422. (a) The Commissioner shall—

(1) prepare and disseminate to State and local educational agencies and institutions information concerning applicable programs and cooperate with other Federal officials who administer programs affecting education in disseminating information concerning such programs;

(2) inform the public on federally supported education programs;

(3) collect data and information on applicable programs for the purpose of obtaining objective measurements of the effectiveness of such programs in achieving their purposes; and

(4) prepare and publish an annual report (to be referred to as "the Commissioner's annual report") on (A) the condition of education in the Nation, (B) developments in the administration, utilization, and impact of applicable programs, (C) results of investigations and activities by the Office of Education, and (D) such facts and recommendations as will serve the purpose for which the Office of Education is established (as set forth in section 403 of this Act).

(b) The Commissioner's annual report shall be submitted to the Congress not later than June 30 of each calendar year. The Commissioner's annual report shall be made available to State and local educational agencies and other appropriate agencies and institutions and to the general public.

(c) The Commissioner is authorized to enter into contracts with public or private agencies, organizations, groups, or individuals to carry out the provisions of this section.

(20 U.S.C. 1231a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 166; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 301(b)(2)(B), 86 Stat. 332; amended October 12, 1976, P.L. 94-482, sec. 409(b), 90 Stat. 2233; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

CATALOG OF FEDERAL EDUCATION ASSISTANCE PROGRAMS

SEC. 423. The Commissioner shall prepare and make available in such form as he deems appropriate a catalog of all Federal education assistance programs whether or not such programs are administered by him. The catalog shall—

(1) identify each such program, and include the name of the program, the authorizing statute, the specific Federal administering officials, and a brief description of such program;

(2) set forth the availability of benefits and eligibility restrictions in each such program;

(3) set forth the budget requests for each such program, past appropriations, obligations incurred, and pertinent financial information indicating (A) the size of each such program for selected fiscal years, and (B) any funds remaining available;

(4) set forth the prerequisites, including the cost to the recipient of receiving assistance under each such program, and any duties required of the recipient after receiving benefits;

(5) identify appropriate officials, in Washington, District of Columbia, as well as in each State and locality (if applicable), to whom application or reference for information for each such program may be made;

(6) set forth the application procedures;

(7) contain a detailed index designed to assist the potential beneficiary in identifying all education assistance programs related to a particular need or category of potential beneficiaries;

(8) contain such other program information and data as the Commissioner deems necessary or desirable in order to assist the potential program beneficiary to understand and take advantage of each Federal education assistance program; and

(9) be transmitted to Congress with the Commissioner's annual report.

(20 U.S.C. 1231b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 167; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COMPILATION OF ASSISTED INNOVATIVE PROJECTS

SEC. 424. The Assistant Secretary shall publish annually a compilation of all innovative projects assisted under programs administered in the Education Division, including title III and part C of title IV of the Elementary and Secondary Education Act of 1965, in any year funds are used to carry out such programs. Such compilation shall be indexed according to subject, descriptive terms, and locations.

(20 U.S.C. 1231b-1) Enacted August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565, 566; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REVIEW OF APPLICATIONS

SEC. 425. (a) In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law, rules, regulations, or guidelines governing the applicable program, in (1) disapproving or failing to approve its application or program in whole or part, (2) failing to provide funds in amounts in accord with the requirements of laws and regulations, (3) ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or (4) terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than ten days after the hearing the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations, and guidelines, governing such applicable program it shall rescind such final action.

(b) Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under such subsection (a) may appeal such action to the Commissioner. An appeal under this subsection may be taken only if notice of such appeal is filed with the Commissioner within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If, on such appeal, the Commissioner determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Commissioner may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) If any State educational agency fails or refuses to comply with any provision of this section, or with any order of the Commissioner under subsection (b), the Commissioner shall forthwith terminate all assistance to the State educational agency under the applicable program affected.

(20 U.S.C. 1231b-2) Enacted August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 566; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

TECHNICAL ASSISTANCE

SEC. 426. (a) For the purpose of carrying out more effectively Federal education programs, the Commissioner is authorized, upon request, to provide advice, counsel, and technical assistance to State educational agencies, institutions of higher education, and, with the approval of the appropriate State educational agency, elementary and secondary schools—

(1) in determining benefits available to them under Federal law;

(2) in preparing applications for, and meeting requirements of applicable programs;

(3) in order to enhance the quality, increase the depth, or broaden the scope of activities under applicable programs; and

(4) in order to encourage simplification of applications, reports, evaluations, and other administrative procedures.

(b) The Commissioner shall permit local educational agencies to use organized and systematic approaches in determining cost allocation, collection, measurement, and reporting under any applicable program, if he determines (1) that the use of such approaches will not in any manner lessen the effectiveness and impact of such program in achieving purposes for which it is intended, (2) that the agency will use such procedures as will insure adequate evaluation of each of the programs involved, and (3) that such approaches are consistent with criteria prescribed by the Comptroller General of the United States for the purposes of audit. For the purpose of this subsection a cost is allocable to a particular cost objective to the extent of relative benefits received by such objective.

(c) In awarding contracts and grants for the development of curricula or instructional materials, the Commissioner and the Director of the National Institute of Education shall—

(1) encourage applicants to assure that such curricula or instructional materials will be developed in a manner conducive to dissemination through continuing consultations with publishers, personnel of State and local educational agencies, teachers, administrators, community representatives, and other individuals experienced in such dissemination;

(2) permit applicants to include provision for reasonable consultation fees or planning costs; and

(3) insure that grants to public agencies and nonprofit private organizations and contracts with public agencies and private organizations for publication and dissemination of curricula or instructional materials, or both, are awarded competitively to such agencies and organizations which provide assurances that the curricula and instructional materials will reach the target populations for which they were developed.

(d) The Commissioner's annual report shall contain a statement of the Commissioner's activities under this section.

(20 U.S.C. 1231c) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 167; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; amended Nov. 1, 1978, P.L. 95-561, sec. 1248, 92 Stat. 2354, 2355; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

EQUALIZATION ASSISTANCE

SEC. 426A. (a) The Commissioner is authorized from the sums appropriated pursuant to subsection (d) to make grants to States to assist in developing and implementing plans to revise their systems of financing elementary and secondary education in order to achieve a greater equalization of resources among school districts. Any State desiring to receive such a grant shall (1) submit an application approved by the State legislature for such funds, (2) provide that State funds will match the Federal funds on a dollar for dollar basis, and (3) show how these efforts build upon the knowledge gained through the plans developed pursuant to section 842 of the Education Amendments of 1974.

(b) The Commissioner is authorized, from sums appropriated pursuant to subsection (d), (1) to develop and disseminate models and materials useful to the States in planning and implementing revisions of their school financing systems, and (2) to establish temporary national and regional training centers to assist those involved in school finance in providing the level of expertise needed by the States in revising their financing systems.

(c) The Commissioner shall (1) designate a unit within the Office of Education to serve as a national dissemination center for information on the States' efforts to achieve a greater equalization of resources for elementary and secondary education, and (2) develop an analysis of what has been learned through the use of funds available under section 842 of the Education Amendments of 1974 and disseminate the results of this analysis.

(d) There are hereby authorized to be appropriated $4,000,000 for each of the fiscal years ending prior to September 30, 1983, for the purposes of this section.

(20 U.S.C. 1231c-1) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1202, 92 Stat. 2334; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PARENTAL INVOLVEMENT AND DISSEMINATION

SEC. 427. In the case of any applicable program in which the Commissioner determines that parental participation at the State or local level would increase the effectiveness of the program in achieving its purposes, he shall promulgate regulations with respect to such program setting forth criteria designed to encourage such participation. If the program for which such determination provides for payments to local educational agencies, applications for such payments shall—

(1) set forth such policies and procedures as will ensure that programs and projects assisted under the application have been planned and developed, and will be operated, in consultation with, and with the involvement of parents of, the children to be served by such programs and projects;

(2) be submitted with assurance that such parents have had an opportunity to present their views with respect to the application; and

(3) set forth policies and procedures for adequate dissemination of program plans and evaluations to such parents and the public.

(20 U.S.C. 1231d) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

USE OF FUNDS WITHHELD FOR FAILURE TO COMPLY WITH OTHER PROVISIONS OF FEDERAL LAW

SEC. 428. At any time that the Commissioner establishes an entitlement, or makes an allotment, or reallotment to any State, under any applicable program, he shall reduce such entitlement, allotment, or reallotment by such amount as he determines it would have been reduced, had the data on which the entitlement, allotment, or reallotment is based excluded all data relating to local educational agencies of the State which on the date of the Commissioner's action are ineligible to receive the Federal financial assistance involved because of a failure to comply with title VI of the Civil Rights Act of 1964. Any appropriated funds which will not be paid to a State as a result of the preceding sentence may be used by the Commissioner for grants to local educational agencies of that State in accordance with section 405 of the Civil Rights Act of 1964.

(20 U.S.C. 1231e) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUTHORIZATION TO FURNISH INFORMATION

SEC. 429. The Commissioner is authorized to transfer transcripts or copies of other records of the Office of Education to State and local officials, public and private organizations, and individuals.

(20 U.S.C. 1231f) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 168; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 501(b), 88 Stat. 558; redesignated August 21, 1974, P.L. 93-380, sec. 508(a), 88 Stat. 565; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

SUBPART 2—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

APPLICATIONS

SEC. 430. (a) Notwithstanding any other provision of law, unless expressly in limitation of the provisions of this section, the Commissioner is authorized to provide for the submission of applications for assistance effective for three fiscal years under any applicable program with whatever amendments to such applications being required as the Commissioner determines essential.

(b) The Commissioner shall, insofar as is practicable, establish uniform dates during the year for the submission of applications under all applicable programs and for the approval of such applications.

(c) The Commissioner shall, insofar as is practicable, develop and require the use of—

(1) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local

agencies pursuant to some objective formula, and such application shall be used as the single application for as many of these programs as is practicable;

(2) a common application for grants to local educational agencies in applicable programs administered by State educational agencies in which the funds are distributed to such local agencies on a competitive or discretionary basis, and such application shall be used as the single application for as many of such programs as is practicable; and

(3) a common application for grants to local educational agencies in applicable programs which are directly administered by the Commissioner, and such application shall be used as the single application for as many of these programs as is practicable.

(20 U.S.C. 1231g) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1213, 92 Stat. 2342; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REGULATIONS: REQUIREMENTS AND ENFORCEMENT

SEC. 431. (a)(1) For the purpose of this section, the term "regulation" means any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Commissioner.

(2) Regulations issued by the Department of Health, Education, and Welfare or the Office of Education, or by any official of such agencies, in connection with, or affecting, the administration of any applicable program shall contain immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(b)(1) No proposed regulation prescribed for the administration of any applicable program may take effect until thirty days after it is published in the Federal Register.

(2)(A) During the thirty-day period prior to the date upon which such regulation is to be effective, the Commissioner shall, in accordance with the provisions of section 553, of title 5, United States Code, offer any interested party an opportunity to make comment upon, and take exception to, such standard, rule, regulation, or general requirement and shall reconsider any such standard, rule, regulation, or general requirement upon which comment is made or to which exception is taken.

(B) If the Commissioner determines that the thirty-day requirement in paragraph (1) will cause undue delay in the implementation of a regulation, thereby causing extreme hardship for the intended beneficiaries of an applicable program, he shall notify the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate. If neither committee disagrees with the determination of the Commissioner within 10 days after such notice, the Commissioner may waive such requirement with respect to such regulation.

(c) All such regulations shall be uniformly applied and enforced throughout the fifty States.

(d)(1) Concurrently with the publication in the Federal Register of any final regulation (except expected family contribution sched-

ules and any amendments thereto promulgated pursuant to sections 428(a)(2) (D) and (E) and 482(a) (1) and (2) of the Higher Education Act of 1965) of general applicability as required in subsection (b) of this section, such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Such final regulation shall become effective not less than forty-five days after such transmission unless the Congress shall, by concurrent resolution, find that the final regulation is inconsistent with the Act from which it derives its authority, and disapprove such final regulation, in whole or in part. Failure of the Congress to adopt such a concurrent resolution with respect to any such final regulation prescribed under any such Act, shall not represent, with respect to such final regulation, an approval or finding of consistency with the Act from which it derives its authority for any purpose, nor shall such failure to adopt a concurrent resolution be construed as evidence of an approval or finding of consistency necessary to establish a prima facie case, or an inference or presumption, in any judicial proceeding.

(2) The forty-five day period specified in paragraph (1) shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days. In any such period of adjournment, the forty-five days shall continue to run, but if such period of adjournment is thirty calendar days, or less, the forty-five day period shall not be deemed to have elapsed earlier than ten days after the end of such adjournment. In any period of adjournment which lasts more than thirty days, the forty-five day period shall be deemed to have elapsed after thirty calendar days has elapsed, unless, during those thirty calendar days, either the Committee on Education and Labor of the House of Representatives, or the Committee on Labor and Human Resources of the Senate, or both, shall have directed its chairman, in accordance with said committee's rules, and the rules of that House, to transmit to the appropriate department or agency head a formal statement of objection to the final regulation. Such letter shall suspend the effective date of the final regulation until not less than twenty days after the end of such adjournment, during which the Congress may enact the concurrent resolution provided for in this subsection. In no event shall the final regulation go into effect until the forty-five day period shall have elapsed, as provided for in this subsection, for both Houses of the Congress.[1]

(e) Whenever a concurrent resolution of disapproval is enacted by the Congress under the provisions of this section, the agency which issued such regulation may thereafter issue a modified regulation to govern the same or substantially identical circumstances, but shall, in publishing such modification in the Federal Register and submitting it to the Speaker of the House of Representatives and the President of the Senate, indicate how the modification differs from the final regulation earlier disapproved, and how the agency

[1] Section 5(b) of P.L. 94-48 (The Emergency Technical Provisions Act) provides that "Subsections (b) and (d) of Section 431 of the General Education Provisions Act shall not operate to delay the effectiveness of regulations issued by the Commissioner of Education to implement the provisions of this Act."

believes the modification disposes of the findings by the Congress in the concurrent resolution of disapproval.

(f) For the purposes of subsections (d) and (e) of this section, activities under sections 404, 405, and 406 of this title, and under title IX of the Education Amendments of 1972 shall be deemed to be applicable programs.

(g) Not later than sixty days after the enactment of any part of any Act affecting the administration of any applicable program, the Commissioner shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate a schedule in accordance with which the Commissioner has planned to promulgate final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be promulgated within one hundred and eighty days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be promulgated in accordance with such schedule. If the Commissioner finds that, due to circumstances unforeseen at the time of the submission of any such schedule, he cannot comply with a schedule submitted pursuant to this subsection, he shall notify such committees of such findings and submit a new schedule. If both such committees notify the Commissioner of their approval of such new schedule, such final regulations shall be promulgated in accordance with such new schedule.

(20 U.S.C. 1232) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 509(a), 88 Stat. 566, 568; amended November 29, 1975, P.L. 94-142, sec. 7, 89 Stat. 796; amended October 12, 1976, P.L. 94-482, sec. 405, 90 Stat. 2231; amended Oct. 3, 1980, P.L. 96-374, sec. 1302, 94 Stat. 1497; amended August 13, 1981, P.L. 97-35, sec. 533(a)(3), 95 Stat. 453; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 3, 1980, P.L. 96-374, sec. 1302, 94 Stat. 1497; amended Aug. 13, 1981, P.L. 97-35, sec. 533(a)(3), 95 Stat. 453.

MAINTENANCE OF EFFORT DETERMINATION

SEC. 431A. [Repealed by P.L. 98-511, sec. 109, 98 Stat. 2369.]

PROHIBITION AGAINST FEDERAL CONTROL OF EDUCATION

SEC. 432. No provision of any applicable program shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system, or over the selection of library resources, textbooks, or other printed or published instructional materials by any educational institution or school system, or to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(20 U.S.C. 1232a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended June 23, 1972, P.L. 92-318, sec. 717(b), 86 Stat. 369; amended October 12, 1976, P.L. 94-482, sec. 404(b), 90 Stat. 2230.

LABOR STANDARDS

SEC. 433. Except for emergency relief under section 7 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), all

laborers and mechanics employed by contractors or subcontractors on all construction and minor remodeling projects assisted under any applicable program shall be paid wages at rates not less than those prevailing on similar construction and minor remodeling in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this section, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

(20 U.S.C. 1232b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 169; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326.

Subpart 3—Administration of Education Programs and Projects by States and Local Educational Agencies

STATE EDUCATIONAL AGENCY MONITORING AND ENFORCEMENT

SEC. 434. (a) In the case of any applicable program in which Federal funds are made available to local agencies in a State through or under the supervision of a State board or agency, the Commissioner may require the State to submit a plan for monitoring compliance by local agencies with Federal requirements under such program and for enforcement by the State of such requirements. The Commissioner may require such plan to provide—

(1) for periodic visits by State personnel of programs administered by local agencies to determine whether such programs are being conducted in accordance with such requirements;

(2) for periodic audits of expenditures under such programs by auditors of the State or other auditors not under the control, direction, or supervision of the local educational agency; and

(3) that the State investigate and resolve all complaints received by the State, or referred to the State by the Commissioner relating to the administration of such programs.

(b) In order to enforce the Federal requirements under any applicable program the State may—

(1) withhold approval, in whole or in part, of the application of a local agency for funds under the program until the State is satisfied that such requirements will be met; except that the State shall not finally disapprove such an application unless the State provides the local agency an opportunity for a hearing before an impartial hearing officer and such officer determines that there has been a substantial failure by the local agency to comply with any of such requirements;

(2) suspend payments to any local agency, in whole or in part, under the program if the State has reason to believe that the local agency has failed substantially to comply with any of such requirements, except that (A) the State shall not suspend such payments until fifteen days after the State provides the local agency an opportunity to show cause why such action should not be taken and (B) no such suspension shall continue in effect longer than sixty days unless the State within such period provides the notice for a hearing required under paragraph (3) of this subsection;

(3) withhold payments, in whole or in part, under any such program if the State finds, after reasonable notice and opportunity for a hearing before an impartial hearing officer, that the local agency has failed substantially to comply with any of such requirements.

Any withholding of payments under paragraph (3) of this subsection shall continue until the State is satisfied that there is no longer a failure to comply substantially with any of such requirements.

(20 U.S.C. 1232c) Enacted Apr. 13, 1970, P.L. 91-230, sec. 401(a), 84 Stat. 169; redesignated June 23, 1972, P.L. 92-318, secs. 301(a)(1), 501, 86 Stat. 326, 345; amended Aug. 24, 1974, P.L. 93-380, sec. 510, 88 Stat. 568, 571; amended Oct. 12, 1976, P.L. 94-482, sec. 501(f)(1), 90 Stat. 2237; redesignated and amended Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(3), 92 Stat. 2342, 2343; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

SINGLE STATE APPLICATION

SEC. 435. (a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject, in the case of programs under chapter 1 and chapter 2 of title I of the Elementary and Secondary Education Act of 1965, to the provisions of title V of such Act) to the Commissioner a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

(1) that each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) that the State will adopt and use proper methods of administering each applicable program, including—

(A) monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) the dissemination throughout the State of information on program requirements and successful practices, and

(E) the correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) that the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Commissioner may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) that the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) that the State will make reports to the Commissioner (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Commissioner to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 437 of this Act, and afford access to the records as the Commissioner may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

(A) the State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) the State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plan to be accepted for at least thirty days;

(C) the State will hold public hearings on the proposed plans if required by the Commissioner by regulation; and

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing

the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Commissioner shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

(20 U.S.C. 1232d) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(3), 92 Stat. 2343-2345 (former sec. 435 redesignated as sec. 415). See also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 19, 1984, P.L. 98-511, sec. 706(a), 98 Stat. 2406; amended April 28, 1988, P.L. 100-297, sec. 3501(c), 102 Stat. 357.

SINGLE LOCAL EDUCATIONAL AGENCY APPLICATION

SEC. 436. (a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

(1) that the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) that the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) that the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) that the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

(5) that the local educational agency will provide reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for and operation of each program;

(6) that any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence of architecture and design

and to compliance with standards prescribed by the Secretary under section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

(9) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

(20 U.S.C. 1232e) Enacted Apr. 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170; redesignated June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended Nov. 1, 1978, P.L. 95-561, sec. 1231(a)(3), 92 Stat. 2345, 2346; amended Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Oct. 19, 1984, P.L. 98-511, sec. 706(b), 98 Stat. 2407.

Subpart 4—Records; Privacy; Limitation on Withholding Federal Funds

RECORDS

SEC. 437. (a) Each recipient of Federal funds under any applicable program through any grant, subgrant, contract, subcontract, loan, or other arrangement (other than procurement contracts awarded by an administrative head of an educational agency) shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective audit. The recipient shall maintain such records for five years after the completion of the activity for which the funds are used.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit examination, to any records of a recipient which may be related, or pertinent to, the grants, subgrants, contracts, subcontracts, loans, or other arrangements to which reference is made in subsection (a), or which may relate to the compliance of the recipient with any requirement of an applicable program.

(20 U.S.C. 1232f) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1231(c), 92 Stat. 2346 (former sec. 437 redesignated as sec. 406A).

PROTECTION OF THE RIGHTS AND PRIVACY OF PARENTS AND STUDENTS[1]

SEC. 438. (a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the educational records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purposes for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's educational records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or

[1] This section may be cited as the "Family Educational Rights and Privacy Act of 1974".

other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials, which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I), are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution. records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to

each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(b)(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c)), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally iden-

tifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection.[1]

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1) (A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(6) Nothing in this section shall be construed to prohibit an institution of postsecondary education from disclosing, to an alleged

[1] Apparent error. The word ", unless—" should probably appear in place of the period.

victim of any crime of violence (as that term is defined in section 26 of title 18, United States Code), the results of any disciplinary proceeding conducted by such institution against the alleged perpetrator of such crime with respect to such crime.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(20 U.S.C. 1232g) Enacted August 21, 1974, P.L. 93-380, sec. 513(a), 88 Stat. 571, 574; amended December 31, 1974, P.L. 93-568, sec. 2, 88 Stat. 1858, 1860; amended Aug. 6, 1979, P.L. 96-46, sec. 4(c) 93 Stat. 342; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677; amended Nov. 8, 1990, P.L. 101-142, sec. 203, 104 Stat. 2385.

PROTECTION OF PUPIL RIGHTS

SEC. 439. (a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any ap-

plicable program designed to explore or develop new or unproven teaching methods or techniques.

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

(1) political affiliations;

(2) mental and psychological problems potentially embarrassing to the student or his family;

(3) sex behavior and attitudes;

(4) illegal, anti-social, self-incriminating and demeaning behavior;

(5) critical appraisals of other individuals with whom respondents have close family relationships;

(6) legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

(20 U.S.C. 1232h) Enacted August 21, 1974, P.L. 93-380, sec. 514(a), 88 Stat. 574; amended Nov. 1, 1978, P.L. 95-561, sec. 1250, 92 Stat. 2355, 2356.

LIMITATION ON WITHHOLDING OF FEDERAL FUNDS

SEC. 440. (a) Except as provided in section 438(b)(1)(D) of this Act, the refusal of a State or local educational agency or institution of higher education, community college, school, agency offering a preschool program, or other educational institution to provide personally identifiable data on students or their families, as a part of any applicable program, to any Federal office, agency, department, or other third party, on the grounds that it constitutes a violation of the right to privacy and confidentiality of students or their parents, shall not constitute sufficient grounds for the suspension or termination of Federal assistance. Such a refusal shall also not constitute sufficient grounds for a denial of, a refusal to consider, or a delay in the consideration of, funding for such a recipient in succeeding fiscal years. In the case of any dispute arising under this section, reasonable notice and opportunity for a hearing shall be afforded the applicant.

(b) The extension of Federal financial assistance to a local educational agency may not be limited, deferred, or terminated by the Secretary on the ground of noncompliance with title VI of the Civil Rights Act of 1964 or any other nondiscrimination provision of Federal law unless such agency is accorded the right of due process of law, which shall include—

(1) at least 30 days prior written notice of deferral to the agency, setting forth the particular program or programs which the Secretary finds to be operated in noncompliance with a specific provision of Federal law;

(2) the opportunity for a hearing on the record before a duly appointed administrative law judge within a 60-day period (unless such period is extended by mutual consent of the Secre-

tary and such agency) from the commencement of any deferral;

(3) the conclusion of such hearing and the rendering of a decision on the merits by the administrative law judge within a period not to exceed 90 days from the commencement of such hearing, unless the judge finds by a decision that such hearing cannot be concluded or such decision cannot be rendered within such period, in which case such judge may extend such period for not to exceed 60 additional days;

(4) the limitation of any deferral of Federal financial assistance which may be imposed by the Secretary to a period not to exceed 15 days after the rendering of such decision unless there has been an express finding on such record that such agency has failed to comply with any such nondiscrimination provision of Federal law; and

(5) procedures, which shall be established by the Secretary, to ensure the availability of sufficient funds, without regard to any fiscal year limitations, to comply with the decision of such judge.

(c) It shall be unlawful for the Secretary to defer or limit any Federal financial assistance on the basis of any failure to comply with the imposition of quotas (or any other numerical requirements which have the effect of imposing quotas) on the student admission practices of an institution of higher education or community college receiving Federal financial assistance.

(20 U.S.C. 1232i) Enacted August 21, 1974, P.L. 93-380, sec. 515(a), 88 Stat. 574; amended October 12, 1976, P.L. 94-482, secs. 407, 408, 90 Stat. 2232, 2233.

PART D—ADVISORY COUNCILS

DEFINITIONS

SEC. 441. As used in this part, the term—

(1) "advisory council" means any committee, board, commission, council, or other similar group (A) established or organized pursuant to any applicable statute, or (B) established under the authority of section 442; but such term does not include State advisory councils or commissions established pursuant to any such statute;

(2) "statutory advisory council" means an advisory council established by, or pursuant to, statute to advise and make recommendations with respect to the administration or improvement of an applicable program or other related matter;

(3) "nonstatutory advisory council" means an advisory council which is (A) established under the authority of section 442, or (B) established to advise and make recommendations with respect to the approval of applications for grants or contracts as required by statute;

(4) "Presidential advisory council" means a statutory advisory council, the members of which are appointed by the President;

(5) "Secretarial advisory council" means a statutory advisory council, the members of which are appointed by the Secretary;

(6) "Commissioner's advisory council"[1] means a statutory advisory council, the members of which are appointed by the Commissioner;

(7) "applicable statute" means any statute (or title, part, or section thereof) which authorizes an applicable program or controls the administration of any such program.

(20 U.S.C. 1233) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 170; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUTHORIZATION FOR NECESSARY ADVISORY COUNCILS

SEC. 442. (a) The Commissioner is authorized to create, and appoint the members of, such advisory councils as he determines in writing to be necessary to advise him with respect to—

(1) the organization of the Office of Education and its conduct in the administration of applicable programs;

(2) recommendations for legislation regarding education programs and the means by which the educational needs of the Nation may be met; and

(3) special problems and areas of special interest in education.

(b) Each advisory council created under the authority of subsection (a) shall terminate not later than one year from the date of its creation unless the Commissioner determines in writing not more than thirty days prior to the expiration of such one year that its existence for an additional period, not to exceed one year, is necessary in order to complete the recommendations or reports for which it was created.

(c) The Commissioner shall include in his report submitted pursuant to section 448 a statement on all advisory councils created or extended under the authority of this section and their activities.

(20 U.S.C. 1233a) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

MEMBERSHIP AND REPORTS OF STATUTORY ADVISORY COUNCILS

SEC. 443. (a) Notwithstanding any other provision of law unless expressly in limitation of the provisions of this section, each statutory advisory council—

(1) shall be composed of the number of members provided by statute who may be appointed, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and shall serve for terms of not to exceed three years, which in the case of initial members, shall be staggered; and

(2) shall make an annual report of its activities, findings and recommendations to the Congress not later than March 31 of each calendar year, which shall be submitted with the Commissioner's annual report.

[1] References to the office, functions, etc. of the Commissioner of Education were, in effect, deleted by the Department of Education Reorganization Act, approved Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677, 690.

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The Commissioner shall not serve as a member of any such advisory council.

(b) Members of Presidential advisory councils shall continue to serve, regardless of any other provision of law limiting their terms, until the President appoints other members to fill their positions.

(20 U.S.C. 1233b) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 516(a), 88 Stat. 575; amended October 12, 1976, P.L. 94-482, sec. 411, 90 Stat. 2234; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

COMPENSATION OF MEMBERS OF ADVISORY COUNCILS

SEC. 444. Members of all advisory councils to which this part is applicable who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the advisory council or otherwise engaged in the business of the advisory council, be entitled to receive compensation at a rate fixed by the Commissioner, but not exceeding the rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the advisory council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(20 U.S.C. 1233c) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-18, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

PROFESSIONAL, TECHNICAL, AND CLERICAL STAFF; TECHNICAL ASSISTANCE

SEC. 445. (a) Presidential advisory councils are authorized to appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, or otherwise obtain the services of, such professional, technical, and clerical personnel as may be necessary to enable them to carry out their functions, as prescribed by law.

(b) The Assistant Secretary shall engage such personnel and technical assistance as may be required to permit Secretarial and Assistant Secretary's advisory councils to carry out their function as prescribed by law.

(c) Subject to regulations of the Assistant Secretary, Presidential advisory councils are authorized to procure temporary and intermittent services of such personnel as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-18 in section 5332 of such title.

(d) No employee of an advisory council, appointed and compensated pursuant to this section, shall be compensated at a rate in excess of that which such employee would receive if such employee were appointed subject to the appropriate provisions of title 5, United States Code, regarding appointments to, and compensation with respect to, the competitive service, except that—

(1) executive directors of Presidential advisory councils shall be compensated at the rate specified for employees placed in grade GS-18 of the General Schedule set forth in section 5332 of such title 5;

(2) executive directors of all other statutory advisory councils shall be compensated at the rate provided for employees in grade 15 of such General Schedule; and

(3) in accordance with regulations promulgated by the Assistant Secretary, other employees of advisory councils shall be compensated at such rates as may be necessary to enable such advisory councils to accomplish their purposes.

(20 U.S.C. 1233d) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 171; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 93-380, sec. 517(a), 88 Stat. 575; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

MEETINGS OF ADVISORY COUNCILS

SEC. 446. (a) Each statutory advisory council shall meet at the call of the chairman thereof but not less than two times each year. Nonstatutory advisory councils shall meet in accordance with regulations promulgated by the Commissioner.

(b) Minutes of each meeting of each advisory council shall be kept and shall contain a record of the persons present, a description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory council. The accuracy of all minutes shall be certified to by the chairman of the advisory council.

(20 U.S.C. 1233e) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

AUDITING AND REVIEW OF ADVISORY COUNCIL ACTIVITIES

SEC. 447. (a) Each statutory advisory council shall be subject to such general regulations as the Commissioner may promulgate respecting the governance of statutory advisory councils and shall keep such records of its activities as will fully disclose the disposition of any funds which may be at its disposal and the nature and extent of its activities in carrying out its functions.

(b) The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of each advisory council which is subject to the operation of this part.

(20 U.S.C. 1233f) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326; amended August 21, 1974, P.L. 92-380, sec. 517(b), 88 Stat. 575; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

REPORT BY THE COMMISSIONER OF EDUCATION

SEC. 448. (a) Not later than June 30 of each calendar year after 1970, the Commissioner shall submit, as a part of the Commissioner's annual report, a report on the activities of the advisory councils which are subject to this part to the Committee on Labor and

Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and affiliations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each such advisory council.

(b) If the Commissioner determines that a statutory advisory council is not needed or that the functions of two or more statutory advisory councils should be combined, he shall include in the report a recommendation that such advisory council be abolished or that such functions be combined. Unless there is an objection to such action by either the Senate or the House of Representatives within ninety days after the submission of such report, the Commissioner is authorized to abolish such advisory council or combine the functions of two or more advisory councils as recommended in such report.

(20 U.S.C. 1233g) Enacted April 13, 1970, P.L. 91-230, sec. 401(a)(10), 84 Stat. 172; renumbered June 23, 1972, P.L. 92-318, sec. 301(a)(1), 86 Stat. 326, amended June 15, 1977, P.L. 95-43, sec. 1(d), 91 Stat. 219; see also general reference Oct. 17, 1979, P.L. 96-88, sec. 301, 93 Stat. 677.

RELATION TO OTHER LAWS

SEC. 449. (a) No provision of any law establishing, authorizing the establishment of, or controlling the operation of, an advisory council which is not consistent with the provisions of this part shall apply to any advisory council to which this part applies.

(b) The provisions of subsections (e) and (f) of section 10 of the Federal Advisory Committee Act shall not apply to Presidential advisory councils (as defined in section 441).

(20 U.S.C. 1233h) Enacted August 21, 1974, P.L. 93-380, sec. 518(a), 88 Stat. 575.

PART E—ENFORCEMENT[1]

SEC. 451. OFFICE OF ADMINISTRATIVE LAW JUDGES.

(a) The Secretary shall establish in the Department of Education an Office of Administrative Law Judges (hereinafter in this part referred to as the "Office") which shall conduct—

(1) recovery of funds hearings pursuant to section 452 of this Act,

(2) withholding hearings pursuant to section 455 of this Act,

(3) cease and desist hearings pursuant to section 456 of this Act, and

(4) other proceedings designated by the Secretary.

(b) The administrative law judges (hereinafter "judges") of the Office shall be appointed by the Secretary in accordance with section 3105 of title 5, United States Code.

(c) The judges shall be officers or employees of the Department. The judges shall meet the requirements imposed for administrative law judges pursuant to section 3105 of title 5, United States Code. In choosing among equally qualified candidates for such positions the Secretary shall give favorable consideration to the candidates' experience in State or local educational agencies and their knowl-

[1] P.L. 100-297 amended Part E to read as follows.

edge of the workings of Federal education programs in such agencies. The Secretary shall designate one of the judges of the Office to be the chief judge.

(d) For the purposes of conducting hearings described in subsection (a), the chief judge shall assign a judge to each case or class of cases. A judge shall be disqualified in any case in which the judge has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or the party's attorney as to make it improper for the judge to be assigned to the case.

(e) The judge shall review and may require that evidence be taken on the sufficiency of the preliminary departmental determination as set forth in section 452.

(f)(1) The proceedings of the Office shall be conducted according to such rules as the Secretary shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556, and 557.

(2) The provisions of title 5, United States Code, section 504, relating to costs and fees of parties, shall apply to the proceedings before the Department.

(g)(1) In order to secure a fair, expeditious, and economical resolution of cases and where the judge determines that the discovered information is likely to elicit relevant information with respect to an issue in the case, is not sought primarily for the purposes of delay or harassment, and would serve the ends of justice, the judge may order a party to—

(A) produce relevant documents;

(B) answer written interrogatories that inquire into relevant matters; and

(C) have depositions taken.

The judge shall set a time limit of 90 days on the discovery period. The judge may extend this period for good cause shown. At the request of any party, the judge may establish a specific schedule for the conduct of discovery.

(2) In order to carry out the provisions of subsections (f)(1) and (g)(1), the judge is authorized to issue subpoenas and apply to the appropriate court of the United States for enforcement of a subpoena. The court may enforce the subpoena as if it pertained to a proceeding before that court.

(h) The Secretary shall establish a process for the voluntary mediation of disputes pending before the Office. The mediator shall be agreed to by all parties involved in mediation and shall be independent of the parties to the dispute. In the mediation of disputes the Secretary shall consider mitigating circumstances and proportion of harm pursuant to section 453. In accordance with rule 408 of the Federal Rules of Evidence, evidence of conduct or statements made in compromise negotiations shall not be admissible in proceedings before the Office. Mediation shall be limited to 120 days, except that the mediator may grant extensions of such period.

(i) The Secretary shall employ, assign, or transfer sufficient professional personnel, including judges of the Office, to ensure that all matters brought before the Office may be dealt with in a timely manner.

(20 U.S.C. 1234) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 452. RECOVERY OF FUNDS.

(a)(1) Whenever the Secretary determines that a recipient of a grant or cooperative agreement under an applicable program must return funds because the recipient has made an expenditure of funds that is not allowable under that grant or cooperative agreement, or has otherwise failed to discharge its obligation to account properly for funds under the grant or cooperative agreement, the Secretary shall give the recipient written notice of a preliminary departmental decision and notify the recipient of its right to have that decision reviewed by the Office and of its right to request mediation.

(2) In a preliminary departmental decision, the Secretary shall have the burden of stating a prima facie case for the recovery of funds. The facts to serve as the basis of the preliminary departmental decision may come from an audit report, an investigative report, a monitoring report, or other evidence. The amount of funds to be recovered shall be determined on the basis of section 453.

(3) For the purpose of paragraph (2), failure by a recipient to maintain records required by law, or to allow the Secretary access to such records, shall constitute a prima facie case.

(b)(1) A recipient that has received written notice of a preliminary departmental decision and that desires to have such decision reviewed by the Office shall submit to the Office an application for review not later than 30 days after receipt of notice of the preliminary departmental decision. The application shall be in the form and contain the information specified by the Office. As expeditiously as possible, the Office shall return to the Secretary for such action as the Secretary considers appropriate any preliminary departmental decision which the Office determines does not meet the requirements of subsection (a)(2).

(2) In cases where the preliminary departmental decision requests a recovery of funds from a State recipient, that State recipient may not recover funds from an affected local educational agency unless that State recipient has—

(A) transmitted a copy of the preliminary departmental decision to any affected subrecipient within 10 days of the date that the State recipient in a State administered program received such written notice; and

(B) consulted with each affected subrecipient to determine whether the State recipient should submit an application for review under paragraph (1).

(3) In any proceeding before the Office under this section, the burden shall be upon the recipient to demonstrate that it should not be required to return the amount of funds for which recovery is sought in the preliminary departmental decision under subsection (a).

(c) A hearing shall be set 90 days after receipt of a request for review of a preliminary departmental decision by the Office, except that such 90-day requirement may be waived at the discretion of the judge for good cause.

(d) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown,

may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(e) Parties to the proceeding shall have 30 days to file a petition for review of a decision of the administrative law judges with the Office of the Secretary.

(f)(1) If a recipient submits a timely application for review of a preliminary departmental decision, the Secretary shall take no collection action until the decision of the Office upholding the preliminary Department decision in whole or in part becomes final agency action under subsection (g).

(2) If a recipient files a timely petition for judicial review under section 458, the Secretary shall take no collection action until judicial review is completed.

(3) The filing of an application for review under paragraph (1) or a petition for judicial review under paragraph (2) shall not affect the authority of the Secretary to take any other adverse action under this part against the recipient.

(g) A decision of the Office regarding the review of a preliminary departmental decision shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action, or

(2) remands the decision to the Office.

(h) The Secretary shall publish decisions that have become final agency action under subsection (g) in the Federal Register or in another appropriate publication within 60 days.

(i) The amount of a preliminary departmental decision under subsection (a) for which review has not been requested in accordance with subsection (b), and the amount sustained by a decision of the Office or the Secretary which becomes final agency action under subsection (g), may be collected by the Secretary in accordance with chapter 37 of title 31, United States Code.

(j)(1) Notwithstanding any other provision of law, the Secretary may, subject to the notice requirements of paragraph (2), compromise any preliminary departmental decision under this section which does not exceed the amount agreed to be returned by more than $200,000, if the Secretary determines that (A) the collection of any or all or the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the preliminary departmental decision has been corrected and will not recur.

(2) Not less than 45 days prior to the exercise of the authority to compromise a preliminary departmental decision pursuant to paragraph (1), the Secretary shall publish in the Federal Register a notice of intention to do so. The notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

(k) No recipient under an applicable program shall be liable to return funds which were expended in a manner not authorized by

law more than 5 years before the recipient received written notice of a preliminary departmental decision.

(l) No interest shall be charged arising from a claim during the administrative review of the preliminary departmental decision.

(20 U.S.C. 1234a) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 453. MEASURE OF RECOVERY.

(a)(1) A recipient determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, shall be required to return funds in an amount that is proportionate to the extent of the harm its violation caused to an identifiable Federal interest associated with the program under which the recipient received the award. Such amount shall be reduced in whole or in part by an amount that is proportionate to the extent the mitigating circumstances caused the violation.

(2) For the purpose of paragraph (1), an identifiable Federal interest includes, but is not limited to, serving only eligible beneficiaries; providing only authorized services or benefits; complying with expenditure requirements and conditions (such as set-aside, excess cost, maintenance of effort, comparability, supplement-not-supplant, and matching requirements); preserving the integrity of planning, application, recordkeeping, and reporting requirements; and maintaining accountability for the use of funds.

(b)(1) When a State or local educational agency is determined to have made an unallowable expenditure, or to have otherwise failed to discharge its responsibility to account properly for funds, and mitigating circumstances exist, as described in paragraph (2), the judge shall reduce such amount by an amount that is proportionate to the extent the mitigating circumstances caused the violation. Furthermore, the judge is authorized to determine that no recovery is justified when mitigating circumstances warrant. The burden of demonstrating the existence of mitigating circumstances shall be upon the State or local educational agency.

(2) For the purpose of paragraph (1), mitigating circumstances exist only when it would be unjust to compel the recovery of funds because the State or local educational agency—

(A) actually and reasonably relied upon erroneous written guidance provided by the Department;

(B) made an expenditure or engaged in a practice after—

(i) the State or local educational agency submitted to the Secretary, in good faith, a written request for guidance with respect to the expenditure or practice at issue, and

(ii) a Department official did not respond within 90 days of receipt by the Department of such request; or

(C) actually and reasonably relied upon a judicial decree issued to the recipient.

(3) A written request for guidance as described in paragraph (2) sent by certified mail (return receipt requested) shall be conclusive proof of receipt by the Department.

(4) If the Secretary responds to a written request for guidance described in paragraph (2)(B) more than 90 days after its receipt, the State or local educational agency that submitted the request shall comply with the guidance received at the earliest practicable time.

(5) In order to demonstrate the existence of the mitigating circumstances described in paragraph (2)(B), the State or local educational agency shall demonstrate that—

(A) the written request for guidance accurately described the proposed expenditure or practice and included the facts necessary for a determination of its legality; and

(B) the written request for guidance contained a certification by the chief legal officer of the State educational agency that such officer had examined the proposed expenditure or practice and believed the proposed expenditure or practice was permissible under then applicable State and Federal law; and

(C) the State or local educational agency reasonably believed that the proposed expenditure or practice was permissible under then applicable State and Federal law.

(6) The Secretary shall disseminate to State educational agencies responses to written requests for guidance, described in paragraph (5), that reflect significant interpretations of applicable law or policy.

(c) The Secretary shall periodically review the written requests for guidance submitted under this section to determine the need for new or supplementary regulatory or other guidance under applicable programs.

(20 U.S.C. 1234b) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 454. REMEDIES FOR EXISTING VIOLATIONS.

(a) Whenever the Secretary has reason to believe that any recipient of funds under any applicable program is failing to comply substantially with any requirement of law applicable to such funds, the Secretary may—

(1) withhold further payments under that program, as authorized by section 455;

(2) issue a complaint to compel compliance through a cease and desist order of the Office, as authorized by section 456;

(3) enter into a compliance agreement with a recipient to bring it into compliance, as authorized by section 457; or

(4) take any other action authorized by law with respect to the recipient.

(b) Any action, or failure to take action, by the Secretary under this section shall not preclude the Secretary from seeking a recovery of funds under section 452.

(20 U.S.C. 1234c) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 455. WITHHOLDING.

(a) In accordance with section 454, the Secretary may withhold from a recipient, in whole or in part, further payments (including payments for administrative costs) under an applicable program.

(b) Before withholding payments, the Secretary shall notify the recipient, in writing, of—

(1) the intent to withhold payments;

(2) the factual and legal basis for the Secretary's belief that the recipient has failed to comply substantially with a requirement of law; and

(3) an opportunity for a hearing to be held on a date at least 30 days after the notification has been sent to the recipient.

(c) The hearing shall be held before the Office and shall be conducted in accordance with the rules prescribed pursuant to subsections (f) and (g) of section 451 of this Act.

(d) Pending the outcome of any hearing under this section, the Secretary may suspend payments to a recipient, suspend the authority of the recipient to obligate Federal funds, or both, after such recipient has been given reasonable notice and an opportunity to show cause why future payments or authority to obligate Federal funds should not be suspended.

(e) Upon review of a decision of the Office by the Secretary, the findings of fact by the Office, if supported by substantial evidence, shall be conclusive. However, the Secretary, for good cause shown, may remand the case to the Office to take further evidence, and the Office may thereupon make new or modified findings of fact and may modify its previous action. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(f) The decision of the Office in any hearing under this section shall become final agency action 60 days after the recipient receives written notice of the decision unless the Secretary either—

(1) modifies or sets aside the decision, in whole or in part, in which case the decision of the Secretary shall become final agency action when the recipient receives written notice of the Secretary's action; or

(2) remands the decision of the Office.

(20 U.S.C. 1234d) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 456. CEASE AND DESIST ORDERS.

(a) In accordance with section 454, the Secretary may issue to a recipient under an applicable program a complaint which—

(1) describes the factual and legal basis for the Secretary's belief that the recipient is failing to comply substantially with a requirement of law; and

(2) contains a notice of a hearing to be held before the Office on a date at least 30 days after the service of the complaint.

(b) The recipient upon which a complaint has been served shall have the right to appear before the Office on the date specified and to show cause why an order should not be entered by the Office requiring the recipient to cease and desist from the violation of law charged in the complaint.

(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Office. If upon that hearing the Office is of the opinion that the recipient is in violation of any requirement of law as charged in the complaint, the Office shall—

(1) make a report in writing stating its findings of fact; and

(2) issue to the recipient an order requiring the recipient to cease and desist from the practice, policy, or procedure which resulted in the violation.

(d) The report and order of the Office under this section shall become the final agency action when the recipient receives the report and order.

(e) The Secretary may enforce a final order of the Office under this section which becomes final agency action by—

(1) withholding from the recipient any portion of the amount payable to it, including the amount payable for administrative costs, under the applicable program; or

(2) certifying the facts to the Attorney General who shall cause an appropriate proceeding to be brought for the enforcement of the order.

(20 U.S.C. 1234e) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 457. COMPLIANCE AGREEMENTS.

(a) In accordance with section 454, the Secretary may enter into a compliance agreement with a recipient under an applicable program. The purpose of any compliance agreement under this section shall be to bring the recipient into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations of such requirements.

(b)(1) Before entering into a compliance agreement with a recipient, the Secretary shall hold a hearing at which the recipient, affected students and parents or their representatives, and other interested parties are invited to participate. The recipient shall have the burden of persuading the Secretary that full compliance with the applicable requirements of law is not feasible until a future date.

(2) If the Secretary determines, on the basis of all the evidence presented, that full compliance is genuinely not feasible until a future date, the Secretary shall make written findings to that effect and shall publish those findings, along with the substance of any compliance agreement, in the Federal Register.

(c) A compliance agreement under this section shall contain—

(1) an expiration date not later than 3 years from the date of the written findings under subsection (b)(2), by which the recipient shall be in full compliance with the applicable requirements of law, and

(2) those terms and conditions with which the recipient must comply until it is in full compliance.

(d) If a recipient fails to comply with the terms and conditions of a compliance agreement under this section, the Secretary may consider that compliance agreement to be no longer in effect, and the Secretary may take any action authorized by law with respect to the recipient.

(20 U.S.C. 1234f) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 458. JUDICIAL REVIEW.

(a) Any recipient of funds under an applicable program that would be adversely affected by a final agency action under section 452, 455, or 456 of this Act, and any State entitled to receive funds under a program described in section 435(a) of this title whose application has been disapproved by the Secretary, shall be entitled to judicial review of such action in accordance with the provisions of this section. The Secretary may not take any action on the basis of a final agency action until judicial review is completed.

(b) A recipient that desires judicial review of an action described in subsection (a) shall, within 60 days of that action, file with the United States Court of Appeals for the circuit in which that recipient is located, a petition for review of such action. A copy of the petition shall be transmitted by the clerk of the court to the

Secretary. The Secretary shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

(c) The findings of fact by the Office, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Office to take further evidence, and the Office may make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) The court shall have jurisdiction to affirm the action of the Office or the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(20 U.S.C. 1234g) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 459. USE OF RECOVERED FUNDS.

(a) Whenever the Secretary recovers funds paid to a recipient under a grant or cooperative agreement made under an applicable program because the recipient made an expenditure of funds that was not allowable, or otherwise failed to discharge its responsibility to account properly for funds, the Secretary may consider those funds to be additional funds available for that program and may arrange to repay to the recipient affected by that action an amount not to exceed 75 percent of the recovered funds if the Secretary determines that—

(1) the practices or procedures of the recipient that resulted in the violation of law have been corrected, and that the recipient is in all other respects in compliance with the requirements of that program;

(2) the recipient has submitted to the Secretary a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misuse of funds that resulted in the recovery; and

(3) the use of those funds in accordance with that plan would serve to achieve the purposes of the program under which the funds were originally paid.

(b) Any payments by the Secretary under this section shall be subject to such other terms and conditions as the Secretary considers necessary to accomplish the purposes of the affected programs, including—

(1) the submission of periodic reports on the use of funds provided under this section; and

(2) consultation by the recipient with students, parents, or representatives of the population that will benefit from the payments.

(c) Notwithstanding any other provisions of law, the funds made available under this section shall remain available for expenditure for a period of time deemed reasonable by the Secretary, but in no case to exceed more than 3 fiscal years following the fiscal year in which final agency action under section 452(e) is taken.

(d) At least 30 days prior to entering into an arrangement under this section, the Secretary shall publish in the Federal Register a

notice of intent to enter into such an arrangement and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least 30 days to submit comments to the Secretary regarding the proposed arrangement.

(20 U.S.C. 1234h) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

SEC. 460. DEFINITIONS.

For purposes of this part:

(1) The term "recipient" means a recipient of a grant or cooperative agreement under an applicable program.

(2) The term "applicable program" excludes programs authorized by the Higher Education Act of 1965 and assistance programs provided under the Act of September 30, 1950 (Public Law 874, 81st Congress), and the Act of September 23, 1950 (Public Law 815, 81st Congress).

(20 U.S.C. 1234i) Enacted April 28, 1988, P.L. 100-297, sec. 3501, 102 Stat. 349.

INSPECTOR GENERAL ACT OF 1978

109

Inspector General Act of 1978

AN ACT To establish Offices of Inspector General within various departments and agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Inspector General Act of 1978".

PURPOSE; ESTABLISHMENT

SEC. 2. In order to create independent and objective units—

(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 11(2);[1]

(2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations; and

(3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action;

there is hereby established in each of such establishments an office of Inspector General.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 2, 92 Stat. 1101; amended Oct. 17, 1979, P.L. 96-88, sec. 508(n)(1), 93 Stat. 694; amended December 29, 1981, P.L. 97-113, sec. 705(a)(1), 95 Stat. 1544; amended September 8, 1982, P.L. 97-252, sec. 1117(a)(1), 96 Stat. 750, amended August 16, 1985; P.L. 99-93, sec. 150(a)(1), 99 Stat. 427; amended Aug. 27, 1986, P.L. 99-399, sec.412(a)(1), 100 Stat. 867; amended Oct. 18, 1988, P.L. 100-504, sec. 102(a)(1), 102 Stat. 2515; amended Oct. 25, 1988, P.L. 100-527, sec. 13(h)(1), 102 Stat. 2643.

APPOINTMENT AND REMOVAL OF OFFICERS

SEC. 3. (a) There shall be at the head of each Office an Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations. Each Inspector General shall report to and be under the general supervision of the head of the establishment involved or, to the extent such authority is delegated, the officer next in rank below such head, but shall not report to, or be subject to supervision by, any other officer of such establishment. Neither the head of the establishment nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpena during the course of any audit or investigation.

[1] Section 13(h)(1) of P.L. 100-527, Oct. 25, 1988, 102 Stat. 2643, amended section (2)(1) as it read prior to the amendment made by P.L. 100-504. Thus, the amendments made by P.L. 100-527 cannot be executed.

(b) An Inspector General may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(c) For the purposes of section 7324 of title 5, United States Code, no Inspector General shall be considered to be an employee who determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(d) Each Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of auditing activities relating to programs and operations of the establishment, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of investigative activities relating to such programs and operations.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 3, 92 Stat. 1101.

DUTIES AND RESPONSIBILITIES

SEC. 4. (a) It shall be the duty and responsibility of each Inspector General, with respect to the establishment within which his Office is established—

(1) to provide policy direction for and to conduct, supervise, and coordinate audits and investigations relating to the programs and operations of such establishment;

(2) to review existing and proposed legislation and regulations relating to programs and operations of such establishment and to make recommendations in the semiannual reports required by section 5(a) concerning the impact of such legislation or regulations on the economy and efficiency in the administration of programs and operations administered or financed by such establishment or the prevention and detection of fraud and abuse in such programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by such establishment for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(4) to recommend policies for, and to conduct, supervise, or coordinate relationships between such establishment and other Federal agencies, State and local governmental agencies, and non-governmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by such establishment, or (B) the identification and prosecution of participants in such fraud or abuse; and

(5) to keep the head of such establishment and the Congress fully and currently informed, by means of the reports required by section 5 and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by such establishment, to recommend corrective action concerning

such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action.

(b)(1) In carrying out the responsibilities specified in subsection (a)(1), each Inspector General shall—

(A) comply with standards established by the Comptroller General of the United States for audits of Federal establishments, organizations, programs, activities, and functions;

(B) establish guidelines for determining when it shall be appropriate to use non-Federal auditors; and

(C) take appropriate steps to assure that any work performed by non-Federal auditors complies with the standards established by the Comptroller General as described in paragraph (1).

(2) For purposes of determining compliance with paragraph (1)(A) with respect to whether internal quality controls are in place and operating and whether established audit standards, policies, and procedures are being followed by Offices of Inspector General of establishments defined under section 11(2), Offices of Inspector General of designated Federal entities defined under section 8E(a)(2), and any audit office established within a Federal entity defined under section 8E(a)(1), reviews shall be performed exclusively by an audit entity in the Federal Government, including the General Accounting Office or the Office of Inspector General of each establishment defined under section 11(2), or the Office of Inspector General of each designated Federal entity defined under section 8E(a)(2).

(c) In carrying out the duties and responsibilities established under this Act, each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) In carrying out the duties and responsibilities established under this Act, each Inspector General shall report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 4, 92 Stat. 1102; amended Oct. 18, 1988, P.L. 100-504, sec. 109, 102 Stat. 2529.

REPORTS

SEC. 5. (a) Each Inspector General shall, not later than April 30 and October 31 of each year, prepare semiannual reports summarizing the activities of the Office during the immediately preceding six-month periods ending March 31 and September 30. Such reports shall include, but need not be limited to—

(1) a description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of such establishment disclosed by such activities during the reporting period;

(2) a description of the recommendations for corrective action made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified pursuant to paragraph (1);

(3) an identification of each significant recommendation described in previous semiannual reports on which corrective action has not been completed;

(4) a summary of matters referred to prosecutive authorities and the prosecutions and convictions which have resulted;

(5) a summary of each report made to the head of the establishment under section 6(b)(2) during the reporting period;

(6) a listing, subdivided according to subject matter, of each audit report issued by the Office during the reporting period and for each audit report, where applicable, the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs) and the dollar value of recommendations that funds be put to better use;

(7) a summary of each particularly significant report;

(8) statistical tables showing the total number of audit reports and the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs), for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of disallowed costs; and

(ii) the dollar value of costs not disallowed; and

(D) for which no management decision has been made by the end of the reporting period;

(9) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management, for audit reports—

(A) for which no management decision had been made by the commencement of the reporting period;

(B) which were issued during the reporting period;

(C) for which a management decision was made during the reporting period, including—

(i) the dollar value of recommendations that were agreed to by management; and

(ii) the dollar value of recommendations that were not agreed to by management; and

(D) for which no management decision has been made by the end of the reporting period;

(10) a summary of each audit report issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period (including the date and title of each such report), an explanation of the reasons such management decision has not been made, and a statement concerning the desired timetable for achieving a management decision on each such report;

(11) a description and explanation of the reasons for any significant revised management decision made during the reporting period; and

(12) information concerning any significant management decision with which the Inspector General is in disagreement.

(b) Semiannual reports of each Inspector General shall be furnished to the head of the establishment involved not later than

April 30 and October 31 of each year and shall be transmitted by such head to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment containing—

(1) any comments such head determines appropriate;

(2) statistical tables showing the total number of audit reports and the dollar value of disallowed costs, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of disallowed costs that were recovered by management through collection, offset, property in lieu of cash, or otherwise; and

(ii) the dollar value of disallowed costs that were written off by management; and

(D) for which no final action has been taken by the end of the reporting period;

(3) statistical tables showing the total number of audit reports and the dollar value of recommendations that funds be put to better use by management agreed to in a management decision, for audit reports—

(A) for which final action had not been taken by the commencement of the reporting period;

(B) on which management decisions were made during the reporting period;

(C) for which final action was taken during the reporting period, including—

(i) the dollar value of recommendations that were actually completed; and

(ii) the dollar value of recommendations that management has subsequently concluded should not or could not be implemented or completed; and

(D) for which no final action has been taken by the end of the reporting period; and

(4) a statement with respect to audit reports on which management decisions have been made but final action has not been taken, other than audit reports on which a management decision was made within the preceding year, containing—

(A) a list of such audit reports and the date each such report was issued;

(B) the dollar value of disallowed costs for each report;

(C) the dollar value of recommendations that funds be put to better use agreed to by management for each report; and

(D) an explanation of the reasons final action has not been taken with respect to each such audit report,

except that such statement may exclude such audit reports that are under formal administrative or judicial appeal or upon which management of an establishment has agreed to pursue a legislative solution, but shall identify the number of reports in each category so excluded.

(c) Within sixty days of the transmission of the semiannual reports of each Inspector General to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost. Within 60 days after the transmission of the semiannual reports of each establishment head to the Congress, the head of each establishment shall make copies of such report available to the public upon request and at a reasonable cost.

(d) Each Inspector General shall report immediately to the head of the establishment involved whenever the Inspector General becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of such establishment. The head of the establishment shall transmit any such report to the appropriate committees or subcommittees of Congress within seven calendar days, together with a report by the head of the establishment containing any comments such head deems appropriate.

(e)(1) Nothing in this section shall be construed to authorize the public disclosure of information which is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(2) Notwithstanding paragraph (1)(C), any report under this section may be disclosed to the public in a form which includes information with respect to a part of an ongoing criminal investigation if such information has been included in a public record.

(3) Except to the extent and in the manner provided under section 6103(f) of the Internal Revenue Code of 1986, nothing in this section or in any other provision of this Act shall be construed to authorize or permit the withholding of information from the Congress, or from any committee or subcommittee thereof.

(f) As used in this section—

(1) the term "questioned cost" means a cost that is questioned by the Office because of—

(A) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds;

(B) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or

(C) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable;

(2) the term "unsupported cost" means a cost that is questioned by the Office because the Office found that, at the time of the audit, such cost is not supported by adequate documentation;

(3) the term "disallowed cost" means a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government;

(4) the term "recommendation that funds be put to better use" means a recommendation by the Office that funds could be used more efficiently if management of an establishment

took actions to implement and complete the recommendation, including—

(A) reductions in outlays;

(B) deobligation of funds from programs or operations;

(C) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds;

(D) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee;

(E) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or

(F) any other savings which are specifically identified;

(5) the term "management decision" means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary; and

(6) the term "final action" means—

(A) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and

(B) in the event that the management of an establishment concludes no action is necessary, final action occurs when a management decision has been made.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 5, 92 Stat. 1103; amended September 8, 1982, P.L. 97-252, sec. 1117(c), 96 Stat. 752; amended Oct. 18, 1988, P.L. 100-504, sec. 106, 102 Stat. 2525.

AUTHORITY; ADMINISTRATION PROVISIONS

SEC. 6. (a) In addition to the authority otherwise provided by this Act, each Inspector General, in carrying out the provisions of this Act, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act;

(2) to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable;

(3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof;

(4) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court: *Provided,* That procedures other than subpenas shall be used

by the Inspector General to obtain documents and information from Federal agencies;

(5) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned by this Act, which oath, affirmation, or affidavit when administered or taken by or before an employee of an Office of Inspector General designated by the Inspector General shall have the same force and effect as if administered or taken by or before an officer having a seal;

(6) to have direct and prompt access to the head of the establishment involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this Act;

(7) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(8) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-18 of the General Schedule by section 5332 of title 5, United States Code; and

(9) to the extent and in such amounts as may be provided in advance by appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this Act.

(b)(1) Upon request of an Inspector General for information or assistance under subsection (a)(3), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Inspector General, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(1) or (a)(3) is, in the judgment of an Inspector General, unreasonably refused or not provided, the Inspector General shall report the circumstances to the head of the establishment involved without delay.

(c) Each head of an establishment shall provide the Office within such establishment with appropriate and adequate office space at central and field office locations of such establishment, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d) For purposes of the provisions of title 5, United States Code, governing the Senior Executive Service, any reference in such provisions to the "appointing authority" for a member of the Senior Executive Service or for a Senior Executive Service position shall, if such member or position is or would be within the Office of an

Inspector General, be deemed to be a reference to such Inspector General.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 6, 92 Stat. 1104; amended Oct. 18, 1988, P.L. 100-504, sec. 110, 102 Stat. 2529.

EMPLOYEE COMPLAINTS

SEC. 7. (a) The Inspector General may receive and investigate complaints or information from an employee of the establishment concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

(b) The Inspector General shall not, after receipt of a complaint or information from an employee, disclose the identity of the employee without the consent of the employee, unless the Inspector General determines such disclosure is unavoidable during the course of the investigation.

(c) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, take or threaten to take any action against any employee as a reprisal for making a complaint or disclosing information to an Inspector General, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 7, 92 Stat. 1105.

ADDITIONAL PROVISIONS WITH RESPECT TO THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SEC. 8. (a) No member of the Armed Forces, active or reserve, shall be appointed Inspector General of the Department of Defense.

(b)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of Defense with respect to audits or investigations, or the issuance of subpoenas, which require access to information concerning—

(A) sensitive operational plans;

(B) intelligence matters;

(C) counterintelligence matters;

(D) ongoing criminal investigations by other administrative units of the Department of Defense related to national security; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described in paragraph (1) the Secretary of Defense may prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena, after the Inspector General has decided to initiate, carry out or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to preserve the national security interests of the United States.

(3) If the Secretary of Defense exercises any power under paragraph (1) or (2), the Inspector General shall submit a statement

concerning such exercise within thirty days to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(4) The Secretary shall, within thirty days after submission of a statement under paragraph (3), transmit a statement of the reasons for the exercise of power under paragraph (1) or (2) to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees.

(c) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Department of Defense shall—

(1) be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste, and abuse in the programs and operations of the Department;

(2) initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate;

(3) provide policy direction for audits and investigations relating to fraud, waste, and abuse and program effectiveness;

(4) investigate fraud, waste, and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate;

(5) develop policy, monitor and evaluate program performance, and provide guidance with respect to all Department activities relating to criminal investigation programs;

(6) monitor and evaluate the adherence of Department auditors to internal audit, contract audit, and internal review principles, policies, and procedures;

(7) develop policy, evaluate program performance, and monitor actions taken by all components of the Department in response to contract audits, internal audits, internal review reports, and audits conducted by the Comptroller General of the United States;

(8) request assistance as needed from other audit, inspection, and investigative units of the Department of Defense (including military departments); and

(9) give particular regard to the activities of the internal audit, inspection, and investigative units of the military departments with a view toward avoiding duplication and insuring effective coordination and cooperation.

(d) Notwithstanding section 4(d), the Inspector General of the Department of Defense shall expeditiously report suspected or alleged violations of chapter 47 of title 10, United States Code (Uniform Code of Military Justice), to the Secretary of the military department concerned or the Secretary of Defense.

(e) For the purposes of section 7, a member of the Armed Forces shall be deemed to be an employee of the Department of Defense, except that, when the Coast Guard operates as a service of another department or agency of the Federal Government, a member of the

Coast Guard shall be deemed to be an employee of such department or agency.

(f)(1) Each semiannual report prepared by the Inspector General of the Department of Defense under section 5(a) shall include information concerning the numbers and types of contract audits conducted by the Department during the reporting period. Each such report shall be transmitted by the Secretary of Defense to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives and to other appropriate committees or subcommittees of the Congress.

(2) Any report required to be transmitted by the Secretary of Defense to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified in such section, to the Committees on Armed Services and Governmental Affairs of the Senate and the Committees on Armed Services and Government Operations of the House of Representatives.

(g) The provisions of section 1385 of title 18, United States Code, shall not apply to audits and investigations conducted by, under the direction of, or at the request of the Inspector General of the Department of Defense to carry out the purposes of this Act.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 8, 92 Stat. 1106; amended Sept. 8, 1982, P.L. 97-252, sec. 1117(b), 96 Stat. 751; amended Oct. 18, 1988, P.L. 100-504, sec. 110, 102 Stat. 2529.

SPECIAL PROVISIONS RELATING TO THE AGENCY FOR INTERNATIONAL DEVELOPMENT

SEC. 8A. (a) In addition to the other duties and responsibilities specified in this Act, the Inspector General of the Agency for International Development—

(1) shall supervise, direct, and control all security activities relating to the programs and operations of that Agency, subject to the supervision of the Administrator of that Agency; and

(2) to the extent requested by the Director of the United States International Development Cooperation Agency (after consultation with the Administrator of the Agency for International Development), shall supervise, direct, and control all audit, investigative, and security activities relating to programs and operations within the United States International Development Cooperation Agency.

(b) In addition to the Assistant Inspector Generals provided for in section 3(d) of this Act, the Inspector General of the Agency for International Development shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Security who shall have the responsibility for supervising the performance of security activities relating to programs and operations of the Agency for International Development.

(c) The semiannual reports required to be submitted to the Administrator of the Agency for International Development pursuant to section 5(b) of this Act shall also be submitted to the Director of the United States International Development Cooperation Agency.

(d) In addition to the officers and employees provided for in section 6(a)(6) of this Act, members of the Foreign Service may, at the request of the Inspector General of the Agency for International Development, be assigned as employees of the Inspector General. Members of the Foreign Service so assigned shall be responsible solely to the Inspector General, and the Inspector General (or his or her designee) shall prepare the performance evaluation reports for such members.

(e) In establishing and staffing field offices pursuant to section 6(c) of this Act, the Administrator of the Agency for International Development shall not be bound by overseas personnel ceilings established under the Monitoring Overseas Direct Employment policy.

(f) The reference in section 7(a) of this Act to an employee of the establishment shall, with respect to the Inspector General of the Agency for International Development, be construed to include an employee of or under the United States International Development Cooperation Agency.

(g) The Inspector General of the Agency for International Development shall be in addition to the officers provided for in section 624(a) of the Foreign Assistance Act of 1961.

(h) As used in this Act, the term "Agency for International Development" includes any successor agency primarily responsible for administering part I of the Foreign Assistance Act of 1961.

(5 U.S.C. App.) Enacted Dec. 29, 1981, P.L. 97-113, sec. 705(a)(3), 95 Stat. 1544.

SPECIAL PROVISIONS CONCERNING THE NUCLEAR REGULATORY COMMISSION

SEC. 8B. (a) The Chairman of the Commission may delegate the authority specified in the second sentence of section 3(a) to another member of the Nuclear Regulatory Commission, but shall not delegate such authority to any other officer or employee of the Commission.

(b) Notwithstanding sections 6(a) (7) and (8), the Inspector General of the Nuclear Regulatory Commission is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments and employment, and the obtaining of such services, within the Nuclear Regulatory Commission.

(5 U.S.C. App.) Enacted Oct. 18, 1988, P.L. 100-504, sec. 102(f), 102 Stat. 2516.

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF THE TREASURY

SEC. 8C. (a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Secretary of the Treasury with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) deliberations and decisions on policy matters, including documented information used as a basis for making policy decisions, the disclosure of which could reasonably be expected to have a significant influence on the economy or market behavior;

(E) intelligence or counterintelligence matters; or

(F) other matters the disclosure of which would constitute a serious threat to national security or to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3, United States Code, or any provision of the Presidential Protection Assistance Act of 1976 (18 U.S.C. 3056 note; Public Law 94-524).

(2) With respect to the information described under paragraph (1), the Secretary of the Treasury may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent significant impairment to the national interests of the United States.

(3) If the Secretary of the Treasury exercises any power under paragraph (1) or (2), the Secretary of the Treasury shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of the Treasury shall have oversight responsibility for the internal investigations performed by the Office of Internal Affairs of the Bureau of Alcohol, Tobacco and Firearms, the Office of Internal Affairs of the United States Customs Service, and the Office of Inspections of the United States Secret Service, and the internal audits and internal investigations performed by the Office of Assistant Commissioner (Inspection) of the Internal Revenue Service. The head of each such office shall promptly report to the Inspector General the significant activities being carried out by such office.

(c) Notwithstanding subsection (b), the Inspector General may initiate, conduct and supervise such audits and investigations in the Department of the Treasury (including the bureaus and services referred to in subsection (b)) as the Inspector General considers appropriate.

(d) If the Inspector General initiates an audit or investigation under subsection (c) concerning a bureau or service referred to in subsection (b), the Inspector General may provide the head of the office of such bureau or service referred to in subsection (b) with written notice that the Inspector General has initiated such an audit or investigation. If the Inspector General issues a notice under the preceding sentence, no other audit or investigation shall

be initiated into the matter under audit or investigation by the Inspector General and any other audit or investigation of such matter shall cease.

(e)(1) The Inspector General shall have access to returns and return information, as defined in section 6103(b) of the Internal Revenue Code of 1986, only in accordance with the provisions of section 6103 of such Code and this Act.

(2) Access by the Inspector General to returns and return information under section 6103(h)(1) of such Code shall be subject to the following additional requirements:

(A) In order to maintain internal controls over access to returns and return information, the Inspector General, or in the absence of the Inspector General, the Acting Inspector General, the Deputy Inspector General, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations, shall provide to the Assistant Commissioner (Inspection) of the Internal Revenue Service written notice of the Inspector General's intent to access returns and return information. If the Inspector General determines that the Inspection Service of the Internal Revenue Service should not be made aware of a notice of access to returns and return information, such notice shall be provided to the Senior Deputy Commissioner of Internal Revenue.

(B) Such notice shall clearly indicate the specific returns or return information being accessed, contain a certification by the Inspector General, or in the absence of the Inspector General, the Acting Inspector General, the Deputy Inspector General, the Assistant Inspector General for Audits, or the Assistant Inspector General for Investigations, that the returns or return information being accessed are needed for a purpose described under section 6103(h)(1) of the Internal Revenue Code of 1986, and identify those employees of the Office of Inspector General of the Department of the Treasury who may receive such returns or return information.

(C) The Internal Revenue Service shall maintain the same system of standardized records or accountings of all requests from the Inspector General for inspection or disclosure of returns and return information (including the reasons for and dates of such requests), and of returns and return information inspected or disclosed pursuant to such requests, as described under section 6103(p)(3)(A) of the Internal Revenue Code of 1986. Such system of standardized records or accountings shall also be available for examination in the same manner as provided under section 6103(p)(3) of the Internal Revenue Code of 1986.

(D) The Inspector General shall be subject to the same safeguards and conditions for receiving returns and return information as are described under section 6103(p)(4) of the Internal Revenue Code of 1986.

(f) An audit or investigation conducted by the Inspector General shall not affect a final decision of the Secretary of the Treasury or his delegate under section 6406 of the Internal Revenue Code of 1986.

(g) Notwithstanding section 4(d), in matters involving chapter 75 of the Internal Revenue Code of 1986, the Inspector General shall

report expeditiously to the Attorney General only offenses under section 7214 of such Code, unless the Inspector General obtains the consent of the Commissioner of Internal Revenue to exercise additional reporting authority with respect to such chapter.

(h) Any report required to be transmitted by the Secretary of the Treasury to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on Governmental Affairs and Finance of the Senate and the Committees on Government Operations and Ways and Means of the House of Representatives.

(5 U.S.C. App.) Enacted Oct. 18, 1988, P.L. 100-504, sec. 102(f), 102 Stat. 2518.

SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF JUSTICE

SEC. 8D. (a)(1) Notwithstanding the last two sentences of section 3(a), the Inspector General shall be under the authority, direction, and control of the Attorney General with respect to audits or investigations, or the issuance of subpenas, which require access to sensitive information concerning—

(A) ongoing civil or criminal investigations or proceedings;

(B) undercover operations;

(C) the identity of confidential sources, including protected witnesses;

(D) intelligence or counterintelligence matters; or

(E) other matters the disclosure of which would constitute a serious threat to national security.

(2) With respect to the information described under paragraph (1), the Attorney General may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpena, if the Attorney General determines that such prohibition is necessary to prevent the disclosure of any information described under paragraph (1) or to prevent the significant impairment to the national interests of the United States.

(3) If the Attorney General exercises any power under paragraph (1) or (2), the Attorney General shall notify the Inspector General in writing stating the reasons for such exercise. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice to the Committees on Governmental Affairs and Judiciary of the Senate and the Committees on Government Operations and Judiciary of the House of Representatives, and to other appropriate committees or subcommittees of the Congress.

(b) In carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Justice—

(1) may initiate, conduct and supervise such audits and investigations in the Department of Justice as the Inspector General considers appropriate;

(2) shall give particular regard to the activities of the Counsel, Office of Professional Responsibility of the Department and the audit, internal investigative, and inspection units outside the Office of Inspector General with a view toward avoiding

duplication and insuring effective coordination and cooperation; and

(3) shall refer to the Counsel, Office of Professional Responsibility of the Department for investigation, information or allegations relating to the conduct of an officer or employee of the Department of Justice employed in an attorney, criminal investigative, or law enforcement position that is or may be a violation of law, regulation, or order of the Department or any other applicable standard of conduct, except that no such referral shall be made if the officer or employee is employed in the Office of Professional Responsibility of the Department.

(c) Any report required to be transmitted by the Attorney General to the appropriate committees or subcommittees of the Congress under section 5(d) shall also be transmitted, within the seven-day period specified under such section, to the Committees on the Judiciary and Governmental Affairs of the Senate and the Committees on the Judiciary and Government Operations of the House of Representatives.

(5 U.S.C. App.) Enacted Oct. 18, 1988, P.L. 100-504, sec. 102(f), 102 Stat. 2520.

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8E.[1] (a) Notwithstanding section 11 of this Act, as used in this section—

(1) the term "Federal entity" means any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive branch of the Government, or any independent regulatory agency, but does not include—

(A) an establishment (as defined under section 11(2) of this Act) or part of an establishment;

(B) a designated Federal entity (as defined under paragraph (2) of this subsection) or part of a designated Federal entity;

(C) the Executive Office of the President;

(D) the Central Intelligence Agency;

(E) the General Accounting Office; or

(F) any entity in the judicial or legislative branches of the Government, including the Administrative Office of the United States Courts and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol;

(2) the term "designated Federal entity" means ACTION, Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for Inter-

[1] Section 111 of the Inspector General Act Amendments (Public Law 100-504; 102 Stat. 2529) provides:

SEC. 111. REPORT ON IMPLEMENTATION.

On October 31, 1989, the head of each designated Federal entity (as defined under section 8E(a)(2) of the Inspector General Act of 1978) shall submit to the Director of the Office of Management and Budget and to each House of the Congress a report on the status of the implementation by that designated Federal entity of the requirements of section 8E of such Act. Such report shall identify any area in which implementation is not complete and state the reasons for that failure.

national Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Federal Housing Finance Board, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the Tennessee Valley Authority, the United States International Trade Commission, and the United States Postal Service;

(3) the term "head of the Federal entity" means any person or persons designated by statute as the head of a Federal entity, and if no such designation exists, the chief policymaking officer or board of a Federal entity as identified in the list published pursuant to subsection (h)(1) of this section;

(4) the term "head of the designated Federal entity" means any person or persons designated by statute as the head of a designated Federal entity and if no such designation exists, the chief policymaking officer or board of a designated Federal entity as identified in the list published pursuant to subsection (h)(1) of this section, except that with respect to the National Science Foundation, such term means the National Science Board;

(5) the term "Office of Inspector General" means an Office of Inspector General of a designated Federal entity; and

(6) the term "Inspector General" means an Inspector General of a designated Federal entity.

(b) No later than 180 days after the date of the enactment of this section, there shall be established and maintained in each designated Federal entity an Office of Inspector General. The head of the designated Federal entity shall transfer to such office the offices, units, or other components, and the functions, powers, or duties thereof, that such head determines are properly related to the functions of the Office of Inspector General and would, if so transferred, further the purposes of this section. There shall not be transferred to such office any program operating responsibilities.

(c) Except as provided under subsection (f) of this section, the Inspector General shall be appointed by the head of the designated Federal entity in accordance with the applicable laws and regulations governing appointments within the designated Federal entity.

(d) Each Inspector General shall report to and be under the general supervision of the head of the designated Federal entity, but shall not report to, or be subject to supervision by, any other officer or employee of such designated Federal entity. The head of the designated Federal entity shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or

investigation, or from issuing any subpena during the course of any audit or investigation.

(e) If an Inspector General is removed from office or is transferred to another position or location within a designated Federal entity, the head of the designated Federal entity shall promptly communicate in writing the reasons for any such removal or transfer to both Houses of the Congress.

(f)(1) The Chief Postal Inspector of the United States Postal Service shall also hold the position of Inspector General of the United States Postal Service, and for purposes of this section, shall report to, and be under the general supervision of, the Postmaster General of the United States Postal Service. The Postmaster General, in consultation with the Governors of the United States Postal Service, shall appoint the Chief Postal Inspector. The Postmaster General, with the concurrence of the Governors of the United States Postal Service, shall have power to remove the Chief Postal Inspector or transfer the Chief Postal Inspector to another position or location within the United States Postal Service. If the Chief Postal Inspector is removed or transferred in accordance with this subsection, the Postmaster General shall promptly notify both Houses of the Congress in writing of the reasons for such removal or transfer.

(2) For purposes of paragraph (1), the term "Governors" has the same meaning as such term is defined under section 102(3) of title 39, United States Code.

(g)(1) Sections 4, 5, 6 (other than subsections (a)(7) and (a)(8) thereof), and 7 of this Act shall apply to each Inspector General and Office of Inspector General of a designated Federal entity and such sections shall be applied to each designated Federal entity and head of the designated Federal entity (as defined under subsection (a)) by substituting—

(A) "designated Federal entity" for "establishment"; and

(B) "head of the designated Federal entity" for "head of the establishment".

(2) In addition to the other authorities specified in this Act, an Inspector General is authorized to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Inspector General and to obtain the temporary or intermittent services of experts or consultants or an organization thereof, subject to the applicable laws and regulations that govern such selections, appointments, and employment, and the obtaining of such services, within the designated Federal entity.

(3) Notwithstanding the last sentence of subsection (d) of this section, the provisions of subsection (a) of section 8C (other than the provisions of subparagraphs (A), (B), (C), and (E) of subsection (a)(1)) shall apply to the Inspector General of the Board of Governors of the Federal Reserve System and the Chairman of the Board of Governors of the Federal Reserve System in the same manner as such provisions apply to the Inspector General of the Department of the Treasury and the Secretary of the Treasury, respectively.

(h)(1) No later than April 30, 1989, and annually thereafter, the Director of the Office of Management and Budget, after consultation with the Comptroller General of the United States, shall publish in the Federal Register a list of the Federal entities and desig-

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nated Federal entities and the head of each such entity (as defined under subsection (a) of this section).

(2) Beginning on October 31, 1989, and on October 31 of each succeeding calendar year, the head of each Federal entity (as defined under subsection (a) of this section) shall prepare and transmit to the Director of the Office of Management and Budget and to each House of the Congress a report which—

(A) states whether there has been established in the Federal entity an office that meets the requirements of this section;

(B) specifies the actions taken by the Federal entity otherwise to ensure that audits are conducted of its programs and operations in accordance with the standards for audit of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States, and includes a list of each audit report completed by a Federal or non-Federal auditor during the reporting period and a summary of any particularly significant findings; and

(C) summarizes any matters relating to the personnel, programs, and operations of the Federal entity referred to prosecutive authorities, including a summary description of any preliminary investigation conducted by or at the request of the Federal entity concerning these matters, and the prosecutions and convictions which have resulted.

(5 U.S.C. App.) Enacted Oct. 18, 1988, P.L. 100-504, sec. 104(a), 102 Stat. 2522; amended Aug. 9, 1989, P.L. 101-73, sec. 702, 103 Stat. 415.

RULE OF CONSTRUCTION OF SPECIAL PROVISIONS

SEC. 8F. The special provisions under section 8, 8A, 8B, 8C, or 8D of this Act relate only to the establishment named in such section and no inference shall be drawn from the presence or absence of a provision in any such section with respect to an establishment not named in such section or with respect to a designated Federal entity as defined under section 8E(a).

(5 U.S.C. App.) Enacted Oct. 18, 1988, P.L. 100-504, sec. 105, 102 Stat. 2525.

TRANSFER OF FUNCTIONS

SEC. 9. (a) There shall be transferred—

(1) to the Office of Inspector General—

(A) of the Department of Agriculture, the offices of that department referred to as the "Office of Investigation" and the "Office of Audit";

(B) of the Department of Commerce, the offices of that department referred to as the "Office of Audits" and the "Investigations and Inspections Staff" and that portion of the office referred to as the "Office of Investigations and Security" which has responsibility for investigation of alleged criminal violations and program abuse;

(C) of the Department of Defense, the offices of that department referred to as the "Defense Audit Service" and the "Office of Inspector General Defense Logistics Agency", and that portion of the office of that department referred to as the "Defense Investigative Service" which

has responsibility for the investigation of alleged criminal violations;

(D) of the Department of Education, all functions of the Inspector General of Health, Education, and Welfare or of the Office of Inspector General of Health, Education, and Welfare relating to functions transferred by section 301 of the Department of Education Organization Act;

(E) of the Department of Energy, the Office of Inspector General (as established by section 208 of the Department of Energy Organization Act);

(F) of the Department of Health and Human Services, the Office of Inspector General (as established by title II of Public Law 94-505);

(G) of the Department of Housing and Urban Development, the office of that department referred to as the "Office of Inspector General";

(H) of the Department of the Interior, the office of that department referred to as the "Office of Audit and Investigation";

(I) of the Department of Justice, the offices of that Department referred to as (i) the "Audit Staff, Justice Management Division", (ii) the "Policy and Procedures Branch, Office of the Comptroller, Immigration and Naturalization Service", the "Office of Professional Responsibility, Immigration and Naturalization Service", and the "Office of Program Inspections, Immigration and Naturalization Service", (iii) the "Office of Internal Inspection, United States Marshals Service", (iv) the "Financial Audit Section, Office of Financial Management, Bureau of Prisons" and the "Office of Inspections, Bureau of Prisons", and (v) from the Drug Enforcement Administration, that portion of the "Office of Inspections" which is engaged in internal audit activities, and that portion of the "Office of Planning and Evaluation" which is engaged in program review activities;

(J) of the Department of Labor, the office of that department referred to as the "Office of Special Investigations";

(K) of the Department of Transportation, the offices of that department referred to as the "Office of Investigations and Security" and the "Office of Audit" of the Department, the "Offices of Investigations and Security, Federal Aviation Administration", and "External Audit Divisions, Federal Aviation Administration", the "Investigations Division and the External Audit Division of the Office of Program Review and Investigation, Federal Highway Administration", and the "Office of Program Audits, Urban Mass Transportation Administration";

(L) of the Department of the Treasury, the office of that department referred to as the "Office of Inspector General", and, notwithstanding any other provision of law, that portion of each of the offices of that department referred to as the "Office of Internal Affairs, Bureau of Alcohol, Tobacco, and Firearms", the "Office of Internal Affairs, United States Customs Service", and the "Office of Inspec-

tions, United States Secret Service" which is engaged in internal audit activities;

(M) of the Environmental Protection Agency, the offices of that agency referred to as the "Office of Audit" and the "Security and Inspection Division";

(N) of the Federal Emergency Management Agency, the office of that agency referred to as the "Office of Inspector General";

(O) of the General Services Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations";

(P) of the National Aeronautics and Space Administration, the offices of that agency referred to as the "Management Audit Office" and the "Office of Inspections and Security";

(Q) of the Nuclear Regulatory Commission, the office of that commission referred to as the "Office of Inspector and Auditor";

(R) of the Office of Personnel Management, the offices of that agency referred to as the "Office of Inspector General", the "Insurance Audits Division, Retirement and Insurance Group", and the "Analysis and Evaluation Division, Administration Group";

(S) of the Railroad Retirement Board, the Office of Inspector General (as established by section 23 of the Railroad Retirement Act of 1974);

(T) of the Small Business Administration, the office of that agency referred to as the "Office of Audits and Investigations"; and

(U) of the Veterans' Administration, the offices of that agency referred to as the "Office of Audits" and the "Office of Investigations"; and

(2) such other offices or agencies, or functions, powers, or duties thereof, as the head of the establishment involved may determine are properly related to the functions of the Office and would, if so transferred, further the purposes of this Act, except that there shall not be transferred to an Inspector General under paragraph (2) program operating responsibilities.

(b) The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from available or to be made available, of any office or agency the functions, powers, and duties of which are transferred under subsection (a) are hereby transferred to the applicable Office of Inspector General.

(c) Personnel transferred pursuant to subsection (b) shall be transferred in accordance with applicable laws and regulations relating to the transfer of functions except that the classification and compensation of such personnel shall not be reduced for one year after such transfer.

(d) In any case where all the functions, powers, and duties of any office or agency are transferred pursuant to this subsection, such office or agency shall lapse. Any person who, on the effective date of this Act, held a position compensated in accordance with the General Schedule, and who, without a break in service, is appoint-

ed in an Office of Inspector General to a position having duties comparable to those performed immediately preceding such appointment shall continue to be compensated in the new position at not less than the rate provided for the previous position, for the duration of service in the new position.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 9, 92 Stat. 1108; amended Oct. 17, 1979, P.L. 96-88, sec. 508(n)(2), 93 Stat. 694; amended Sept. 8, 1982, P.L. 97-252, sec. 1117(a)(2), (a)(3), 96 Stat. 750-751; amended Oct. 18, 1988, P.L. 100-504, sec. 102(d), 102 Stat. 2516.

CONFORMING AND TECHNICAL AMENDMENTS

SEC. 10. (a)[1]
(b)[2]
(c)[3]

DEFINITIONS

SEC. 11. As used in this Act—

(1) the term "head of the establishment" means the Secretary of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Labor, State, Transportation,[4] or the Treasury; the Attorney General; the Administrator of the Agency for International Development, Environmental Protection, General Services, National Aeronautics and Space, or Small Business, or Veterans' Affairs; the Director of the Federal Emergency Management Agency, the Office of Personnel Management or the United States Information Agency; the Chairman of the Nuclear Regulatory Commission or the Railroad Retirement Board the Oversight Board and the Board of Directors of the Resolution Trust Corporation;[5] as the case may be;

(2) the term "establishment" means the Department of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation,[6] or the Treasury; the Agency for International Development, the Environmental Protection Agency, the Federal Emergency Management Agency, the General Services Administration, the National Aeronautics and Space Administration, the Nuclear Regulatory Commission, the Office of Personnel Management, the Railroad Retirement Board, the Resolution Trust Corporation, the Small Business Administration, the United States Informa-

[1] Section 10(a) contained an amendment to 5 U.S.C. 5315 to establish certain positions in level IV of the Executive Schedule.

[2] Section 10(b) contained an amendment to 5 U.S.C. 5316 to establish certain positions in level V of the Executive Schedule.

[3] Section 10(c) contained technical amendments to P.L. 94-505 which established an Inspector General at the Department of H.E.W.

[4] Section 13(h) of P.L. 100-527 amended section 11(1) as it read prior to an amendment made by 100-504. Thus, the amendment made by P.L. 100-527 cannot be executed.

[5] Section 501(b)(1)(A) of P.L. 101-73 (103 Stat. 393) amended section 11(1) of this Act as follows: in paragraph (1), by inserting "the Oversight Board and the Board of Directors of the Resolution Trust Corporation" before "; as the case may be,". The amendment probably should have read as follows: in paragraph (1), by inserting "; the Oversight Board and the Board of Directors of the Resolution Trust Corporation" before "; as the case may be;".

[6] Section 13(h) of P.L. 100-527 amended section 11(2) as it read prior to an amendment made by 100-504. Thus, the amendment made by P.L. 100-527 cannot be executed.

tion Agency, or the Veterans' Administration; as the case may be;

(3) the term "Inspector General" means the Inspector General of an establishment;

(4) the term "Office" means the Office of Inspector General of an establishment; and

(5) the term "Federal agency" means an agency as defined in section 552(e) of title 5 (including an establishment as defined in paragraph (2)), United States Code, but shall not be construed to include the General Accounting Office.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 11, 92 Stat. 1109; amended Oct. 17, 1979, P.L. 96-88, sec. 508(n)(3)-(4), 93 Stat. 695; amended Dec. 29, 1981, P.L. 97-113, sec. 705(a)(2), 95 Stat. 1544; amended Sept. 8, 1982, P.L. 97-252, sec. 1117(a)(4), (a)(5), 96 Stat. 751; amended Aug. 16, 1985, P.L. 99-93, sec. 150(a)(2), 99 Stat. 426; amended Aug. 27, 1986, P.L. 99-399, sec. 412(a)(2) (A) & (B), 100 Stat. 867; amended Oct. 18, 1988, P.L. 100-504, sec. 102(c), 102 Stat. 2515; amended Oct. 25, 1988, P.L. 100-527, sec. 13(h), 102 Stat. 2643; amended Aug. 9, 1989, P.L. 101-73, sec. 501(b), 103 Stat. 393.

EFFECTIVE DATE

SEC. 12. The provisions of this Act and the amendments made by this Act shall take effect October 1, 1978.

(5 U.S.C. App.) Enacted Oct. 12, 1978, P.L. 95-452, sec. 12, 92 Stat. 1109.

CIVIL RIGHTS ACT OF 1964

(P.L. 88-352)

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

DEFINITIONS

SEC. 401. As used in this title—

(a) "Commissioner" means the Commissioner of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

(42 U.S.C. 2000c) Enacted July 2, 1964, P.L. 88-352, sec. 401, 78 Stat. 246; amended June 23, 1972, P.L. 92-318, sec. 906(a), 86 Stat. 375.

SURVEY AND REPORT OF EDUCATIONAL OPPORTUNITIES

SEC. 402. The Commissioner shall conduct a survey and make a report to the President and the Congress, within two years of the enactment of this title, concerning the lack of availability of equal educational opportunities for individuals by reason of race, color, religion, or national origin in public educational institutions at all levels in the United States, its territories and possessions, and the District of Columbia.

(42 U.S.C. 2000c-1) Enacted July 2, 1964, P.L. 88-352, sec. 402, 78 Stat. 247.

TECHNICAL ASSISTANCE

SEC. 403. The Commissioner is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Office of Education or other persons specially equipped to advise and assist them in coping with such problems.

(42 U.S.C. 2000c-2) Enacted July 2, 1964, P.L. 88-352, sec. 403, 78 Stat. 247.

TRAINING INSTITUTES

SEC. 404. The Commissioner is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Commissioner in regulations, including allowances for travel to attend such institute.

(42 U.S.C. 2000c-3) Enacted July 2, 1964, P.L. 88-352, sec. 404, 78 Stat. 247.

GRANTS

SEC. 405. (a) The Commissioner is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Commissioner shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

(42 U.S.C. 2000c-4) Enacted July 2, 1964, P.L. 88-352, sec. 405, 78 Stat. 247.

PAYMENTS

SEC. 406. Payments pursuant to a grant or contract under this title may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine.

(42 U.S.C. 2000c-5) Enacted July 2, 1964, P.L. 88-352, sec. 406, 78 Stat. 248.

SUITS BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue

in attendance at a public college by reason of race, color, religion, sex, or national origin

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

(42 U.S.C. 2000c-6) Enacted July 2, 1964, P.L. 88-352, sec. 407, 78 Stat. 248; amended June 23, 1972, P.L. 92-318, sec. 906(a), 86 Stat. 375.

SEC. 408. In any action or proceeding under this title the United States shall be liable for costs the same as a private person.

(42 U.S.C. 2000c-7) Enacted July 2, 1964, P.L. 88-352, sec. 408, 78 Stat. 249.

SEC. 409. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(42 U.S.C. 2000c-8) Enacted July 2, 1964, P.L. 88-352, sec. 409, 78 Stat. 249.

SEC. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, sex, or national origin.

(42 U.S.C. 2000c-9) Enacted July 2, 1964, P.L. 88-352, sec. 410, 78 Stat. 249; amended June 23, 1972, P.L. 92-318, sec. 906(a), 86 Stat. 375.

* * * * * * *

TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

SEC. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(42 U.S.C. 2000d) Enacted July 2, 1964, P.L. 88-352, sec. 601, 78 Stat. 252.

SEC. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(42 U.S.C. 2000d-1) Enacted July 2, 1964, P.L. 88-352, sec. 602, 78 Stat. 25[illegible]

SEC. 603. Any department or agency action taken pursuant to section 602 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 602, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with section 10 of the Administrative Procedure Act,

and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that section.

(42 U.S.C. 2000d-2) Enacted July 2, 1964, P.L. 88-352, sec. 603, 78 Stat. 253.

SEC. 604. Nothing contained in this title shall be construed to authorize action under this title by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(42 U.S.C. 2000d-3) Enacted July 2, 1964, P.L. 88-352, sec. 604, 78 Stat. 253.

SEC. 605. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(42 U.S.C. 2000d-4) Enacted July 2, 1964, P.L. 88-352, sec. 606, 78 Stat. 253.

AGE DISCRIMINATION ACT OF 1975

Age Discrimination Act of 1975[1]

(TITLE III, PUBLIC LAW 94-135)

TITLE III—PROHIBITION OF DISCRIMINATION BASED ON AGE

SHORT TITLE

SEC. 301. The provisions of this title may be cited as the "Age Discrimination Act of 1975".

(42 U.S.C. 6101 note)

STATEMENT OF PURPOSE

SEC. 302. It is the purpose of this title to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(42 U.S.C. 6101) Enacted Nov. 28, 1975, P.L. 94-135, sec. 302, 89 Stat. 728; amended Oct. 18, 1978, P.L. 95-478, sec. 401(a), 92 Stat. 1555 (effective at the close of Sept. 30, 1978); amended April 7, 1986, P.L. 99-272, sec. 14001(b)(4), 100 Stat. 329.

PROHIBITION OF DISCRIMINATION

SEC. 303. Pursuant to regulations prescribed under section 304, and except as provided by section 304(b) and section 304(c), no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(42 U.S.C. 6102)

REGULATIONS

SEC. 304. (a)(1) Not later than one year after the transmission of the report required by section 307(b), or two and one-half years after the date of the enactment of this Act, whichever occurs first, the Secretary of Health, Education, and Welfare shall publish in the Federal Register proposed general regulations to carry out the provisions of section 303.

(2)(A) The Secretary shall not publish such proposed general regulations until the expiration of a period comprised of—

(i) the forty-five day period specified in section 307(e); and

(ii) an additional forty-five day period, immediately following the period described in clause (i), during which any committee of the Congress having jurisdiction over the subject matter involved may conduct hearings with respect to the report which the Commission is required to transmit under section 307(d), and with respect to the comments and recommendations submitted by Federal departments and agencies under section 307(e).

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[1] (42 U.S.C. 6101-6107.) Enacted Nov. 28, 1975 as Title III of P.L. 94-135, secs. 301-308, 89 Stat. 728-732.

(B) The forty-five day period specified in subparagraph (A)(ii) shall include only days during which both Houses of the Congress are in session.

(3) Not later than ninety days after the Secretary publishes proposed regulations under paragraph (1), the Secretary shall publish in the Federal Register final general regulations to carry out the provisions of section 303, after taking into consideration any comments received by the Secretary with respect to the regulations proposed under paragraph (1).

(4) Not later than ninety days after the Secretary publishes final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 303 and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

(b)(1) It shall not be a violation of any provision of this title, or of any regulation issued under this title, for any person to take any action otherwise prohibited by the provisions of section 303 if, in the program or activity involved—

(A) such action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of such program or activity; or

(B) the differentiation made by such action is based upon reasonable factors other than age.

(2) The provisions of this title shall not apply to any program or activity established under authority of any law which (A) provides any benefits or assistance to persons based upon the age of such persons; or (B) establishes criteria for participation in age-related terms or describes intended beneficiaries or target groups in such terms.

(c)(1) Except with respect to any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (29 U.S.C. 801, et seq.), as amended, nothing in this title shall be construed to authorize action under this title by any Federal department or agency with respect to any employment practice of any employer, employment agency, or labor organization, or with respect to any labor-management joint apprenticeship training program.

(2) Nothing in this title shall be construed to amend or modify the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621-634), as amended, or to affect the rights or responsibilities of any person or party pursuant to such Act.

(42 U.S.C. 6103) Enacted Nov. 28, 1975, P.L. 94-135, sec. 304, 89 Stat. 729; amended Oct. 18, 1978, P.L. 95-478, sec. 401(b), 92 Stat. 1555 (effective at the close of Sept. 30, 1978).

ENFORCEMENT

SEC. 305. (a) The head of any Federal department or agency who prescribes regulations under section 304 may seek to achieve compliance with any such regulation—

(1) by terminating, or refusing to grant or to continue, assistance under the program or activity involved to any recipient with respect to whom there has been an express finding on the record, after reasonable notice and opportunity for hearing, of a failure to comply with any such regulation; or

(2) by any other means authorized by law.

(b) Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1). Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 304 withholds funds pursuant to subsection (a), he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 304.

(c) No action may be taken under subsection (a) until the head of the Federal department or agency involved has advised the appropriate person of the failure to comply with the regulation involved and has determined that compliance cannot be secured by voluntary means.

(d) In the case of any action taken under subsection (a), the head of the Federal department or agency involved shall transmit a written report of the circumstances and grounds of such action to the committees of the House of Representatives and the Senate having legislative jurisdiction over the program or activity involved. No such action shall take effect until thirty days after the transmission of any such report.

(e)(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education, and Welfare, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's

fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) With respect to actions brought for relief based on an alleged violation of the provisions of this title, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

(42 U.S.C. 6104) Enacted Nov. 28, 1975, P.L. 94-135, sec. 305, 89 Stat. 730; amended Oct. 18, 1978, P.L. 95-478, sec. 401(c) and (d), 92 Stat. 1555, 1556 (effective at the close of Sept. 30, 1978).

JUDICIAL REVIEW

SEC. 306. (a) Any action by any Federal department or agency under section 305 shall be subject to such judicial review as may otherwise be provided by law for similar action taken by any such department or agency or other grounds.

(b) In the case of any action by any Federal department or agency under section 305 which is not otherwise subject to judicial review, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with the provisions of chapter 7 of title 5, United States Code. For purposes of this subsection, any such action shall not be considered committed to unreviewable agency discretion within the meaning of section 701(a)(2) of such title.

(42 U.S.C. 6105)

STUDY OF DISCRIMINATION BASED ON AGE

SEC. 307. (a) The Commission on Civil Rights shall (1) undertake a study of unreasonable discrimination based on age in programs and activities receiving Federal financial assistance; and (2) identify with particularity any such federally assisted program or activity in which there is found evidence of persons who are otherwise qualified being, on the basis of age, excluded from participation in, denied the benefits of, or subjected to discrimination under such program or activity.

(b) As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including Federal departments and agencies, on issues relating to age discrimination in programs and activities receiving Federal financial assistance, and particularly with respect to the reasonableness of distinguishing, on the basis of age, among potential participants in, or beneficiaries of, specific federally assisted programs.

(c) The Commission is authorized to obtain, through grant or contract, analyses, research and studies by independent experts of issues relating to age discrimination and to publish the results

thereof. For purposes of the study required by this section, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975d(b)).

(d) Not later than two years after the date of the enactment of this Act, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) Not later than forty-five working days after receiving a copy of the report required by subsection (d), each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Public Welfare of the Senate and the Committee on Education and Labor of the House of Representatives.

(f) The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by subsection (a), and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

(g) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

(42 U.S.C. 6106) Enacted Nov. 28, 1975, P.L. 94-135, sec. 307, 89 Stat. 731; amended July 11, 1977, P.L. 95-65, sec. 1, 91 Stat. 269.

REPORTS

SEC. 308. (a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 303; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 303.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 303.

(42 U.S.C. 6106a) Enacted Oct. 18, 1978, P.L. 95-478, sec. 401(e), 92 Stat. 1556 (effective at the close of Sept. 30, 1978).

DEFINITIONS

SEC. 309. For purposes of this title—

(1) the term "Commission" means the Commission on Civil Rights;

(2) the term "Secretary" means the Secretary of Health, Education, and Welfare;

(3) the term "Federal department or agency" means any agency as defined in section 551 of title 5, United States Code, and includes the United States Postal Service and the Postal Rate Commission; and

(4) the term "program or activity" means all of the operations of—

(A)(i) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(B)(i) a college, university, or other postscondary institution, or a public system of higher education; or

(ii) a local educational agency (as defined in section 198(a)(10), of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(C)(i) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(I) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(II) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(D) any other entity which is established by two or more of the entities described in subparagraph (A), (B), or (C);

any part of which is extended Federal financial assistance.

(42 U.S.C. 6107) Enacted Nov. 28, 1975, P.L. 94-135, sec. 308, 89 Stat. 731, 732; redesignated Oct. 18, 1978, P.L. 95-478, sec. 401(e) 92 Stat. 1556 (effective at the close of Sept. 30, 1978); amended March 22, 1988, P.L. 100-259, sec. 5, 102 Stat. 30.

EDUCATION AMENDMENTS OF 1972

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TITLE VIII—GENERAL PROVISIONS RELATING TO THE ASSIGNMENT OR TRANSPORTATION OF STUDENTS[1]

PROHIBITION AGAINST ASSIGNMENT OR TRANSPORTATION OF STUDENTS TO OVERCOME RACIAL IMBALANCE

SEC. 801. No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(20 U.S.C. 1651) Enacted June 23, 1972, P.L. 92-318, sec. 801, 86 Stat. 371.

PROHIBITION AGAINST USE OF APPROPRIATED FUNDS FOR BUSING

SEC. 802. (a). No funds appropriated for the purpose of carrying out any applicable program may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system, except on the express written voluntary request of appropriate local school officials. No such funds shall be made available for transportation when the time or distance of travel is so great as to risk the health of the children or significantly impinge on the educational process of such children, or where the educational opportunities available at the school to which it is proposed that any such student be transported will be substantially inferior to those opportunities offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(b) No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education), the Department of Justice, or any other Federal agency shall, by rule, regulation, order, guideline, or otherwise (1) urge, persuade, induce, or require any local education agency, or any private nonprofit agency, institution, or organization to use any funds derived from any State or local sources for any purpose, unless constitutionally required, for which Federal funds appropriated to carry out any applicable program may not be used, as provided in this section, or (2) condition the receipt of Federal funds under any Federal program upon any action by any State or local public officer or employee which would be prohibited by clause (1) on the part of a Federal officer or employee. No officer, agent, or employee of the Department of Health, Education, and Welfare (including the Office of Education) or any other Federal agency shall urge, persuade, induce, or require any local education agency to undertake transportation of any student where the time or distance of travel is so great as to risk the health of the child or significantly impinge on

[1] Title VIII of P.L. 92-318.

his or her educatonal process; or where the educational opportunities available at the school to which it is proposed that such student be transported will be substantially inferior to those offered at the school to which such student would otherwise be assigned under a nondiscriminatory system of school assignments based on geographic zones established without discrimination on account of race, religion, color, or national origin.

(c) An applicable program means a program to which the General Education Provisions Act applies.

(20 U.S.C. 1652) Enacted June 23, 1972, P.L. 92-318, sec. 802, 86 Stat. 371, 372.

PROVISION RELATING TO COURT APPEALS

SEC. 803. Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transport of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on January 1, 1974.

(20 U.S.C. 1653) Enacted June 23, 1972, P.L. 92-318, sec. 803, 86 Stat. 372.

PROVISION AUTHORIZING INTERVENTION IN COURT ORDERS

SEC. 804. A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educatonal process.

(20 U.S.C. 1654) Enacted June 23, 1972, P.L. 92-318, sec. 804, 86 Stat. 372.

PROVISION REQUIRING THAT RULES OF EVIDENCE BE UNIFORM

SEC. 805. The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.

(20 U.S.C. 1655) Enacted June 23, 1972, P.L. 92-318, sec. 805, 86 Stat. 372.

APPLICATION OF PROVISO OF SECTION 407(A) OF THE CIVIL RIGHTS ACT OF 1964 TO THE ENTIRE UNITED STATES

SEC. 806. The proviso of section 407(a) of the Civil Rights Act of 1964 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and

to every public school system, public school and public school board, as defined by titie IV, under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

(20 U.S.C. 1656) Enacted June 23, 1972, P.L. 92-318, sec. 806, 86 Stat. 373.

TITLE IX—PROHIBITION OF SEX DISCRIMINATION

SEX DISCRIMINATION PROHIBITED

SEC. 901. (a) No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) in regard to admissions to educational institutions, this section shall not apply (A) for one year from the date of enactment of this Act, nor for six years after such date in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Commissioner of Education, whichever is the later;

(3) this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with religious tenets of such organization;

(4) this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference, or

(ii) the selection of students to attend any such conference;

(8) this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: *Provided*, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this title of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) For purposes of this title an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(20 U.S.C. 1681) Enacted June 23, 1972, P.L. 92-318, sec. 901, 86 Stat. 373, 374; amended December 31, 1974, P.L. 93-568, sec. 3(a), 88 Stat. 1862; amended October 12, 1976, P.L. 94-482, sec. 412, 90 Stat. 2234.

FEDERAL ADMINISTRATIVE ENFORCEMENT

SEC. 902. Each Federal department and agency which is empowered to extend Federal financial assistance to any education program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 901 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made, and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however,* That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(20 U.S.C. 1682) Enacted June 23, 1972, P.L. 92-318, sec. 903, 86 Stat. 374, 375.

JUDICIAL REVIEW

SEC. 903. Any department or agency action taken pursuant to section 1002[1] shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 902, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, United States Code, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of section 701 of that title.

(20 U.S.C. 1683) Enacted June 23, 1972, P.L. 92-318, sec. 903, 86 Stat. 374, 375.

[1] Apparent error; should be 902.

PROHIBITION AGAINST DISCRIMINATION AGAINST THE BLIND

SEC. 904. No person in the United States shall, on the ground of blindness or severely impaired vision, be denied admission in any course of study by a recipient of Federal financial assistance for any educational program or activity, but nothing herein shall be construed to require any such institution to provide any special services to such person because of his blindness or visual impairment.

(20 U.S.C. 1684) Enacted June 23, 1972, P.L. 92-318, sec. 904, 86 Stat. 375.

EFFECT ON OTHER LAWS

SEC. 905. Nothing in this title shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(20 U.S.C. 1685) Enacted June 23, 1972, P.L. 92-318, sec. 905, 86 Stat. 375.

AMENDMENTS TO OTHER LAWS

SEC. 906. [Makes conforming amendments to other provisions of law.]

INTERPRETATION WITH RESPECT TO LIVING FACILITIES

SEC. 907. Notwithstanding anything to the contrary contained in this title, nothing contained herein shall be construed to prohibit any educational institution receiving funds under this Act, from maintaining separate living facilities for the different sexes.

(20 U.S.C. 1686) Enacted June 23, 1972, P.L. 92-318, sec. 907, 86 Stat. 375.

INTERPRETATION OF "PROGRAM OR ACTIVITY"

SEC. 908. For the purposes of this title, the term "program or activity" and "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance, except that such term does not include any operation of an entity which is controlled by a religious organization if the application of section 901 to such operation would not be consistent with the religious tenets of such organization.

(20 U.S.C. 1687) Enacted March 22, 1988, P.L. 100-259, sec. 3, 102 Stat. 28.

NEUTRALITY WITH RESPECT TO ABORTION

SEC. 909. Nothing in this title shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

(20 U.S.C. 1688) Enacted March 22, 1988, P.L. 100-259, sec. 3, 102 Stat. 29.

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1966

Elementary And Secondary Education Amendments of 1966

(P.L. 89-750)

AN ACT To strengthen and improve programs of assistance for elementary and secondary schools, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Elementary and Secondary Education Amendments of 1966".

(20 U.S.C. 2701, note) Enacted November 3, 1966, P.L. 89-750, sec. 1, 80 Stat. 1191.

TITLE I—AMENDMENT TO THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

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PART H—RACIAL IMBALANCE AND COMPLIANCE WITH CIVIL RIGHTS ACT OF 1964

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COMPLIANCE WITH CIVIL RIGHTS ACT OF 1964

SEC. 182. The Commissioner of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965, by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), or by the Cooperative Research Act, on the basis of alleged noncompliance with the provisions of title VI of the Civil Rights Act of 1964 for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 602 of title VI of the Civil Rights Act of 1964, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Commissioner, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of title VI of the Civil Rights Act of 1964: *Provided,* That, for the purpose of determining whether a local educational agency is in compliance with title VI of the Civil Rights Act of 1964 (Public Law 88-352), compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be in compliance with such title VI, insofar as the matters covered in the order or judgment are concerned.

(42 U.S.C. 2000d-5) Enacted Nov. 3, 1966, P.L. 89-750, 80 Stat. 1209; amended Jan. 2, 1968, P.L. 90-247, sec. 112, 81 Stat. 787.

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS OF 1969

Elementary And Secondary Education Amendments of 1969

(Public Law 91-230)

AN ACT To extend programs of assistance for elementary and secondary education, and for other purposes

* * * * * * *

POLICY WITH RESPECT TO THE APPLICATION OF CERTAIN PROVISIONS OF FEDERAL LAW

SEC. 2. (a) It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 and section 182 of the Elementary and Secondary Education Amendments of 1966 dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964.

(d) It is the sense of the Congress that the Department of Justice and the Department of Health, Education, and Welfare should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

Enacted April 13, 1970, P.L. 91-230, sec. 2, 84 Stat. 121.

EDUCATION AMENDMENTS OF 1974

34-256 - 91 - 6

TITLE II—EQUAL EDUCATIONAL OPPORTUNITIES AND THE TRANSPORTATION OF STUDENTS[1]

SHORT TITLE

SEC. 201. This title may be cited as the "Equal Educational Opportunities Act of 1974".

(20 U.S.C. 2701, note) Enacted August 21, 1974, P.L. 93-380, sec. 201, 88 Stat. 514.

PART A—EQUAL EDUCATIONAL OPPORTUNITIES

Subpart 1—Policy and Purpose

DECLARATION OF POLICY

SEC. 202. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, sex, or national origin; and

(2) the neighborhood is the appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this part to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

(20 U.S.C. 1701) Enacted August 21, 1974, P.L. 93-380, sec. 202, 88 Stat. 514.

FINDINGS

SEC. 203. (a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, sex, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(3) the implementation of desegregation plans that require extensive student transportation has, in many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(4) transportation of students which creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity, is excessive;

[1] Title II of P.L. 93-380, The Education Amendments of 1974.

(5) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(6) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have not established, a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems, except that the provisions of this title are not intended to modify or diminish the authority of the courts of the United States to enforce fully the fifth and fourteenth amendments to the Constitution of the United States.

(20 U.S.C. 1702) Enacted August 21, 1974, P.L. 93-380, sec. 203, 88 Stat. 514, 515.

Subpart 2—Unlawful Practices

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 204. No State shall deny equal educational opportunity to an individual on account of his or her race, color, sex, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with subpart 4 of this title, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his or her place of residence within the school district in which he or she resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, sex, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his or her place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff, except to fulfill the purposes of subsection (f) below;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its students in its instructional programs.

(20 U.S.C. 1703) Enacted August 21, 1974, P.L. 93-380, sec. 204, 88 Stat. 515.

BALANCE NOT REQUIRED

SEC. 205. The failure of an educational agency to attain a balance, on the basis of race, color, sex, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

(20 U.S.C. 1704) Enacted August 21, 1974, P.L. 93-380, sec. 205, 88 Stat. 515.

ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

SEC. 206. Subject to the other provisions of this part, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity or of equal protection of the laws unless such assignment is for the purpose of segregating students on the basis of race, color, sex, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

(20 U.S.C. 1705) Enacted August 21, 1974, P.L. 93-380, sec. 206, 88 Stat. 515, 516.

Subpart 3—Enforcement

CIVIL ACTIONS

SEC. 207. An individual denied an equal educational opportunity, as defined by this part may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this title referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

(20 U.S.C. 1706) Enacted August 21, 1974, P.L. 93-380, sec. 207, 88 Stat. 516.

EFFECT OF CERTAIN POPULATION CHANGES ON CERTAIN ACTIONS

SEC. 208. When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, such school population changes so occurring shall not, per se, constitute a cause for civil action for a new plan of desegregation or for modification of the court approved plan.

(20 U.S.C. 1707) Enacted August 21, 1974, P.L. 93-380, sec. 208, 88 Stat. 516.

JURISDICTION OF DISTRICT COURTS

SEC. 209. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 207.

(20 U.S.C. 1708) Enacted August 21, 1974, P.L. 93-380, sec. 209, 88 Stat. 516.

INTERVENTION BY ATTORNEY GENERAL

SEC. 210. Whenever a civil action is instituted under section 207 by an individual, the Attorney General may intervene in such action upon timely application.

(20 U.S.C. 1709) Enacted August 21, 1974, P.L. 93-380, sec. 210, 88 Stat. 516.

SUITS BY THE ATTORNEY GENERAL

SEC. 211. The Attorney General shall not institute a civil action under section 207 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of subpart 2 of this part; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

(20 U.S.C. 1710) Enacted August 21, 1974, P.L. 93-380, sec. 211, 88 Stat. 516.

Subpart 4—Remedies

FORMULATING REMEDIES; APPLICABILITY

SEC. 213. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

(20 U.S.C. 1712) Enacted August 21, 1974, P.L. 93-380, sec. 213, 88 Stat. 516.

PRIORITY OF REMEDIES

SEC. 214. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or of the first combination thereof which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type

of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without requiring transportation beyond that described in section 215;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 215 and 216 of this part.

(20 U.S.C. 1713) Enacted August 21, 1974, P.L. 93-380, sec. 214, 88 Stat. 517.

TRANSPORTATION OF STUDENTS

SEC. 215. (a) No court, department, or agency of the United States shall, pursuant to section 214, order the implementation of a plan that would require the transportation of any student to a school other than the school closest or next closest to his place of residence which provides the appropriate grade level and type of education for such student.

(b) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

(c) When a court of competent jurisdiction determines that a school system is desegregated, or that it meets the constitutional requirements, or that it is a unitary system, or that it has no vestiges of a dual system, and thereafter residential shifts in population occur which result in school population changes in any school within such a desegregated school system, no educational agency because of such shifts shall be required by any court, department, or agency of the United States to formulate, or implement any new desegregation plan, or modify or implement any modification of the court approved desegregation plan, which would require transportation of students to compensate wholly or in part for such shifts in school population so occurring.

(20 U.S.C. 1714) Enacted August 21, 1974, P.L. 93-380, sec. 215, 88 Stat. 517.

DISTRICT LINES

SEC. 216. In the formulation of remedies under section 213 or 214 of this part the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, sex, or national origin.

(20 U.S.C. 1715) Enacted August 21, 1974, P.L. 93-380, sec. 216, 88 Stat. 518.

VOLUNTARY ADOPTION OF REMEDIES

SEC. 217. Nothing in this part prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this part nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this part, if such plan is voluntarily proposed by the appropriate educational agency.

(20 U.S.C. 1716) Enacted August 21, 1974, P.L. 93-380, sec. 217, 88 Stat. 518.

REOPENING PROCEEDINGS

SEC. 218. A parent or guardian of a child, or parents or guardians of children similarly situated, transported to a public school in accordance with a court order, or an educational agency subject to a court order or a desegregation plan under title VI of the Civil Rights Act of 1964 in effect on the date of the enactment of this part and intended to end segregation of students on the basis of race, color, or national origin, may seek to reopen or intervene in the further implementation of such court order, currently in effect, if the time or distance of travel is so great as to risk the health of the student or significantly impinge on his or her educational process.

(20 U.S.C. 1717) Enacted August 21, 1974, P.L. 93-380, sec. 218, 88 Stat. 518.

LIMITATION ON ORDERS

SEC. 219. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws may, to the extent of such transportation, be terminated if the court finds the defendant educational agency has satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable, and will continue to be in compliance with the requirements thereof. The court of initial jurisdiction shall state in its order the basis for any decision to terminate an order pursuant to this section, and the termination of any order pursuant to this section shall be stayed pending a final appeal or, in the event no appeal is taken, until the time for any such appeal has expired. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found not to have satisfied the requirements of the fifth or fourteenth amendments to the Constitution, whichever is applicable.

(20 U.S.C. 1718) Enacted August 21, 1974, P.L. 93-380, sec. 219, 88 Stat. 518.

Subpart 5—Definitions

SEC. 221. For the purposes of this part—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801(k) of the Elementary and Secondary Education Act of 1965.

(b) The term "local educational agency" means a local educational agency as defined by section 801(f) of the Elementary and Secondary Education Act of 1965.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency on the basis of race, color, sex, or national origin or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means desegregation as defined by section 401(b) of the Civil Rights Acts of 1964.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(20 U.S.C. 1720) Enacted August 21, 1974, P.L. 93-380, sec. 221, 88 Stat. 518, 519.

Subpart 6—Miscellaneous Provisions

REPEALER

SEC. 222. Section 709(a)(3) of the Emergency School Aid Act is hereby repealed.

Enacted August 21, 1974, P.L. 93-380, sec. 222, 88 Stat. 519.

SEPARABILITY OF PROVISIONS

SEC. 223. If any provision of this part or of any amendment made by this part, or the application of any such provision to any person or circumstance, is held invalid, the remainder of the provisions of this part and the amendments made by this part and the application of such provision to other persons or circumstances shall not be affected thereby.

(20 U.S.C. 1721) Enacted August 21, 1974, P.L. 93-380, sec. 223, 88 Stat. 519.

PART B—OTHER PROVISIONS RELATING TO THE ASSIGNMENT AND TRANSPORTATION OF STUDENTS

PROHIBITION AGAINST ASSIGNMENT OR TRANSPORTATION OF STUDENTS TO OVERCOME RACIAL IMBALANCE

SEC. 251. No provision of this Act shall be construed to require the assignment or transportation of students or teachers in order to overcome racial imbalance.

(20 U.S.C. 1751) Enacted August 21, 1974, P.L. 93-380, sec. 251, 88 Stat. 519.

PROHIBITION AGAINST USE OF FUNDS FOR BUSING

SEC. 252. [Amendment to sec. 420 of the General Education Provisions Act, 20 U.S.C. 1228].

PROVISION RELATING TO COURT APPEALS

SEC. 253. Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by compe-

tent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired. This section shall expire at midnight on June 30, 1978.

(20 U.S.C. 1752) Enacted August 21, 1974, P.L. 93-380, sec. 253, 88 Stat. 519, 520.

PROVISION REQUIRING THAT RULES OF EVIDENCE BE UNIFORM

SEC. 254. The rules of evidence required to prove that State or local authorities are practicing racial discrimination in assigning students to public schools shall be uniform throughout the United States.

(20 U.S.C. 1753) Enacted August 21, 1974, P.L. 93-380, sec. 254, 88 Stat. 520.

APPLICATION OF PROVISO OF SECTION 407(a) OF THE CIVIL RIGHTS ACT OF 1964 TO THE ENTIRE UNITED STATES

SEC. 255. The proviso of section 407(a) of the Civil Rights Act of 1964 providing in substance that no court or official of the United States shall be empowered to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards shall apply to all public school pupils and to every public school system, public school and public school board, as defined by title IV, under all circumstances and conditions and at all times in every State, district, territory, Commonwealth, or possession of the United States, regardless of whether the residence of such public school pupils or the principal offices of such public school system, public school or public school board is situated in the northern, eastern, western, or southern part of the United States.

(20 U.S.C. 1754) Enacted August 21, 1974, P.L. 93-380, sec. 255, 88 Stat. 520.

ADDITIONAL PRIORITY OF REMEDIES

SEC. 256. Notwithstanding any other provision of law, after June 30, 1974 no court of the United States shall order the implementation of any plan to remedy a finding of de jure segregation which involves the transportation of students, unless the court first finds that all alternative remedies are inadequate.

(20 U.S.C. 1755) Enacted August 21, 1974, P.L. 93-380, sec. 256, 88 Stat. 520.

REMEDIES WITH RESPECT TO SCHOOL DISTRICT LINES

SEC. 257. In the formulation of remedies under this title the lines drawn by a State subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn, or maintained or crossed for the purpose, and had the effect of segregating children among public schools on the basis of race, color, sex, or national origin, or where

it is established that, as a result of discriminatory actions within the school districts, the lines have had the effect of segregating children among public schools on the basis of race, color, sex, or national origin.

(20 U.S.C. 1756) Enacted August 21, 1974, P.L. 93-380, sec. 257, 88 Stat. 520.

PROHIBITION OF FORCED BUSING DURING SCHOOL YEAR

SEC. 258. (a) The Congress finds that—

(1) the forced transportation of elementary and secondary school students in implementation of the constitutional requirement for the desegregation of such schools is controversial and difficult under the best planning and administration; and

(2) the forced transportation of elementary and secondary school students after the commencement of an academic school year is educationally unsound and administratively inefficient.

(b) Notwithstanding any other provisions of law, no order of a court, department, or agency of the United States, requiring the transportation of any student incident to the transfer of that student from one elementary or secondary school to another such school in a local educational agency pursuant to a plan requiring such transportation for the racial desegregation of any school in that agency, shall be effective until the beginning of an academic school year.

(c) For the purpose of this section, the term "academic school year" means, pursuant to regulations promulgated by the Commissioner, the customary beginning of classes for the school year at an elementary or secondary school of a local educational agency for a school year that occurs not more often than once in any twelve-month period.

(d) The provisions of this section apply to any order which was not implemented at the beginning of the 1974-1975 academic year.

(20 U.S.C. 1757) Enacted August 21, 1974, P.L. 93-380, sec. 258, 88 Stat. 520, 521.

REASONABLE TIME FOR DEVELOPING VOLUNTARY PLAN FOR DESEGREGATING SCHOOLS

SEC. 259. Not withstanding any other law or provision of law, no court or officer of the United States shall enter, as a remedy for a denial of equal educational opportunity or a denial of equal protection of the laws, any order for enforcement of a plan of desegregation or modification of a court-approved plan, until such time as the local educational agency to be affected by such order has been provided notice of the details of the violation and given a reasonable opportunity to develop a voluntary remedial plan. Such time shall permit the local educational agency sufficient opportunity for community participation in the development of a remedial plan.

(20 U.S.C. 1758) Enacted August 21, 1974, P.L. 93-380, sec. 259, 88 Stat. 521.

EDUCATION AMENDMENTS OF 1978

TITLE XIV—OVERSEAS DEFENSE DEPENDENTS EDUCATION

SHORT TITLE

SEC. 1401. This title may be cited as the "Defense Dependents' Education Act of 1978".

(20 U.S.C. 921 note) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1401, 92 Stat. 2365.

ESTABLISHMENT OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1402. (a) The Secretary of Defense shall establish and operate a program (hereinafter in this title referred to as the "defense dependents' education system") to provide a free public education through secondary school for dependents in overseas areas.

(b)(1) The Secretary shall ensure that individuals eligible to receive a free public education under subsection (a) receive an education of high quality.

(2) In establishing the defense dependents' education system under subsection (a), the Secretary shall provide programs designed to meet the special needs of—

(A) the handicapped,

(B) individuals in need of compensatory education,

(C) individuals with an interest in vocational education,

(D) gifted and talented individuals, and

(E) individuals of limited English-speaking ability.

(3) The Secretary shall provide a developmental preschool program to individuals eligible to receive a free public education under subsection (a) who are of preschool age if a preschool program is not otherwise available for such individuals and if funds for such a program are available.

(c) The Secretary of Defense shall consult with the Secretary of Education on the educational programs and practices of the defense dependents' education system.

(20 U.S.C. 921) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1402, 92 Stat. 2365; amended Nov. 8, 1985, P.L. 99-145, sec. 1204(b)(1), 99 Stat. 720.

OFFICE OF DEPENDENTS' EDUCATION

SEC. 1403. (a)(1) There is established within the Department of Defense an office to be known as the Office of Dependents' Education.

(2) The Office of Dependents' Education shall be headed by a Director of Dependents' Education (hereinafter in this title referred to as the "Director"), who shall be a civilian and who shall be selected by the Secretary of Defense and shall report to the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics.

(b) Except with respect to the authority to prescribe regulations, the Secretary of Defense may carry out his functions under this Act through the Director.

(c) The Director shall—

(1) establish personnel policies, consistent with the Defense Department Overseas Teachers Pay and Personnel Practices

Act, for employees in the defense dependents' education system,

(2) have authority to transfer professional employees in the defense dependents' education system from one position to another.

(3) prepare a unified budget for each fiscal year, which shall include necessary funds for construction and operation and maintenance of facilities, for the defense dependents' education system for inclusion in the Department of Defense budget for that year,

(4) have authority to establish, in accordance with section 1410, local school advisory committees,

(5) have authority to arrange for inservice and other training programs for employees in the defense dependents' education system, and

(6) perform such other functions as may be required or delegated by the Secretary of Defense or the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics.

(d)(1) The Director shall establish appropriate regional or area offices for the Office of Dependents' Education in order to provide for thorough and efficient administration of the defense dependents' education system.

(2) Not later than six months after the date of the enactment of this Act, the Secretary of Defense shall submit to the Congress a report (A) describing the organization of the Office of Dependents' Education in accordance with paragraph (1), (B) describing the assignment of personnel to the central office of the Office of Dependents' Education and to such regional or area offices as are established pursuant to paragraph (1), and (C) detailing the personnel requirements of the defense dependents' education system. Whenever the Office of Dependents' Education is reorganized after the submission of the report required under the preceding sentence, the Secretary of Defense shall submit an additional report to the Congress describing the reorganization.

(3) Subject to the approval of the Secretary of Defense, the Office of Dependents' Education is authorized an appropriate number of civilian employees in its central office and such regional or area office as are established pursuant to paragraph (1).

(20 U.S.C. 922) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1403, 92 Stat. 2365.

TUITION-PAYING STUDENTS

SEC. 1404. (a) Subject to subsection (b) and in accordance with regulations issued under subsection (c), the Director may authorize the enrollment in a school of the defense dependents' education system of a child not otherwise eligible to enroll in such a school if and to the extent that there is space available for such child in the school.

(b)(1) Except as otherwise provided under subsection (c), any child permitted to enroll in a school of the defense dependents' education system under this section shall be required to pay tuition at a rate determined by the Secretary of Defense, which shall not be less than the rate necessary to defray the average cost of the enrollment of children in the system under this section.

(2) Amounts received under paragraph (1) shall be available to the defense dependents' education system to assist in defraying the cost of enrollment of children in the system under this section.

(c) The Secretary of Defense may by regulation identify classes of children who shall be eligible to enroll in schools of the defense dependents' education system under this section if and to the extent that there is space available, establish priorities among such classes, waive the tuition requirement of subsection (b)(1) with respect to any such class, and issue such other regulations as may be necessary to carry out this section.

(d)(1) The Secretary of Defense may authorize the enrollment in schools of the defense dependents' education system of children in the following classes:

(A) Children of officers and employees of the United States (other than civilian officers and employees who are sponsors under section 1414(2)) stationed in overseas areas.

(B) Children of employees of contractors employed in carrying out work for the United States in overseas areas.

(C) Children of other citizens or nationals of the United States or of foreign nationals, if the Secretary determines that enrollment of such children is in the national interest.

(2) Notwithstanding subsection (c), the Secretary may not waive the tuition requirements of subsection (b)(1) with respect to children referred to in paragraph (1).

(20 U.S.C. 923) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1404, 92 Stat. 2366; amended Nov. 8, 1985, P.L. 99-145, sec. 1205, 99 Stat. 720; amended Nov. 29, 1989, P.L. 101-189, sec. 325(b), 103 Stat. 1415.

ANNUAL EDUCATIONAL ASSESSMENT

SEC. 1405. (a) The Director shall assess each year the performance of the defense dependents' education system in providing an education of high quality to children enrolled in the system. Such assessment may include the use of educational assessment measures and such other means as the Director determines to be suitable for assessing student performance.

(b) The results of each annual assessment under subsection (a) with respect to an individual enrolled in the defense dependents' education system shall be made available to the sponsor of such individual, and summary results of each such annual assessment shall be made available to Members of Congress and to professional employees in the system.

(20 U.S.C. 924) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1405, 92 Stat. 2366.

SCHOOL CONSTRUCTION BY THE DIRECTOR OF DEPENDENTS' EDUCATION

SEC. 1406. The President shall include in his budget for each fiscal year a separate request for funds for construction of school facilities by the Director.

(20 U.S.C. 925) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1406, 92 Stat. 2367.

SCHOOL SYSTEM FOR DEPENDENTS IN OVERSEAS AREAS

SEC. 1407. (a) The Secretary of Defense shall establish and operate a school system for dependents in overseas areas as part of the defense dependents' education system.

(b) Under such circumstances as he may by regulation prescribe, the Secretary of Defense may provide tuition to allow dependents in an overseas area where a school operated by the Secretary is not reasonably available to attend schools other than schools established under subsection (a) on a tuition-free basis. Any school to which tuition is paid under this subsection to allow a dependent in an overseas area to attend such school shall provide an educational program satisfactory to the Secretary.

(c) CONTINUATION OF ENROLLMENT FOR CERTAIN DEPENDENTS OF MEMBERS OF THE ARMED FORCES INVOLUNTARILY SEPARATED.—(1) A member of the Armed Forces serving on active duty on September 30, 1990, who is involuntarily separated during the five-year period beginning on October 1, 1990, and who has a dependent described in paragraph (2) who is enrolled in a school of the defense dependents' education system (or a school for which tuition is provided under subsection (b)) on the date of that separation shall be eligible to enroll or continue the enrollment of that dependent at that school (or another school serving the same community) for the final year of secondary education of that dependent in the same manner as if the member were still on active duty.

(2) A department referred to in paragraph (1) is a dependent who on the date of the separation of the member has completed the eleventh grade and is likely to complete secondary education within the one-year period beginning on that date.

(d)(1)(A) Chapter 7 of title 37, United States Code, relating to allowances authorized for members of the uniformed services, is amended by adding after section 428 the following new section:

"§ 429. Travel and transportation allowances: minor dependent schooling

"Under regulations to be prescribed by the Secretary of Defense, a member of a uniformed service whose permanent station is outside the United States may be allowed transportation in kind for any minor dependent (or reimbursement therefor), or a monetary allowance in place of such transportation in kind, to a school operated by the Department of Defense under the Defense Dependents' Education Act of 1978 for dependents in an overseas area which is operated, and which such dependent attends, on a 5-day-a-week dormitory basis or on a 7-day-a-week dormitory basis. In the case of a dependent attending a school on a 5-day-a-week dormitory basis, the transportation in kind or allowance authorized by this section shall be for weekly trips to and from such school, and in the case of a dependent attending a school on a 7-day-a-week dormitory basis, such transportation in kind or allowances shall be for not less than three trips to and from such school during the school year.

(B) The table of sections at the beginning of chapter 7 of title 37, United States Code, is amended by adding after the item relating to section 428 the following new item:

"429. Travel and transportation allowances: minor dependent schooling."

(20 U.S.C. 926) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1407, 92 Stat. 2367; amended Nov. 5, 1990, P.L. 101-510, sec. 504(a), 104 Stat. 1559.

ELIGIBILITY FOR SCHOOL LUNCH AND BREAKFAST PROGRAMS

SEC. 1408.[1]

ALLOTMENT FORMULA

SEC. 1409. (a) The Director shall by regulation establish a formula for determining the minimum allotment of funds necessary for the operation of each school in the defense dependents' education system. In establishing such formula, the Director shall take into consideration—

(1) the number of students served by a school and the size of the school;

(2) special cost factors for a school, including—

(A) geographic isolation of the school,

(B) a need for special staffing, transportation, or educational programs at the school, and

(C) unusual food and housing costs,

(3) the cost of providing academic services of a high quality as required by section 1402(b)(1); and

(4) such other factors as the Director considers appropriate.

(b) Any regulation under subsection (a) shall be issued, and shall become effective, in accordance with the procedures applicable to regulations required to be issued by the Department of Health, Education, and Welfare in accordance with section 431 of the General Education Provisions Act.

(c) The provisions of the Education for All Handicapped Children Act of 1975 shall apply with respect to all schools operated by the Department of Defense under this Act.

(20 U.S.C. 927) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1409, 92 Stat. 2369.

SCHOOL ADVISORY COMMITTEES

SEC. 1410. (a)(1) The Director shall provide for the establishment of an advisory committee for each school in the defense dependents' education system. An advisory committee for a school shall advise the principal or superintendent of the school with respect to the operation of the school, may make recommendations with respect to curriculum and budget matters, and, except as provided under paragraph (2), shall advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander. The membership of each such advisory committee shall include an equal number of parents of students enrolled in the school and of employees working at the school and, when appropriate, may include a student enrolled in the school. The membership of each such advisory committee shall also include one nonvoting member designated by the organization recognized as the exclusive bargaining representative of the employees working at the school.

[1] Sec. 1408 of the Education Amendments of 1978, P.L. 95-561, amended the National School Lunch Act and the Child Nutrition Act of 1966.

(2) In the case of any military installation or overseas area where there is more than one school in the defense dependents' education system, the Director shall provide for the establishment of an advisory committee for such military installation or overseas area to advise the local military commander with respect to problems concerning dependents' education within the jurisdiction of the commander.

(b) Except in the case of a nonvoting member designated under the last sentence of subsection (a)(1), members of a school advisory committee established under this section shall be elected by individuals of voting age residing in the area to be served by the advisory committee. The Secretary of Defense shall by regulation prescribe the qualifications for election to an advisory committee and procedures for conducting elections of advisory committee members.

(c) Members of school advisory committees established under this section shall serve without pay.

(20 U.S.C. 928) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1410, 92 Stat. 2369; amended Oct. 17, 1979, P.L. 96-88, sec. 508(j) (1), (2), 93 Stat. 693; amended Nov. 8, 1985, P.L. 99-145, sec. 1204(b)(2), 99 Stat. 720.

ADVISORY COUNCIL ON DEPENDENTS' EDUCATION

SEC. 1411. (a)(1) There is established in the Department of Defense an Advisory Council on Dependents' Education (hereinafter in this section referred to as the "Council"). The Council shall be composed of—

(A) the Secretary of Defense and the Secretary of Education, or their respective designees;

(B) 12 individuals appointed jointly by the Secretary of Defense and the Secretary of Education who shall be individuals who have demonstrated an interest in the field of primary or secondary education and who shall include representatives of professional employee organizations, school administrators, and parents of students enrolled in the defense dependents' education system, and one student enrolled in such system; and

(C) a representative of the Secretary of Defense and of the Secretary of Education.

(2) Individuals appointed to the Council from professional employee organizations shall be individuals designated by those organizations.

(3) The Secretary of Defense, or the Secretary's designee, and the Secretary of Education, or the Secretary's designee, shall serve as cochairmen of the Council.

(4) The Director shall be the Executive Secretary of the Council.

(b) the term of office of each member of the Council appointed under subsection (a)(2) shall be three years, except that—

(1) of the members first appointed under such paragraph, four shall serve for a term of one year, four shall serve for a term of two years, and four shall serve for a term of three years, as determined by the Secretary of Defense and the Secretary of Education at the time of their appointment, and

(2) any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

No member appointed under subsection (a)(2) shall serve more than two full terms on the Council.

(c) The Council shall meet at least two times each year. The functions of the Council shall be to—

(1) recommend to the Director general policies for operation of the defense dependents' education system with respect to curriculum selection, administration, and operation of the system,

(2) provide information to the Director from other Federal agencies concerned with primary and secondary education with respect to education programs and practices which such agencies have found to be effective and which should be considered for inclusion in the defense dependents' education system,

(3) advise the Director on the design of the study and the selection of the contractor referred to in section 1412(a)(2) of this title, and

(4) perform such other tasks as may be required by the Secretary of Defense.

(d) Members of the Council who are not in the regular full-time employ of the United States shall, while attending meetings or conferences of the Council or otherwise engaged in the business of the Council, be entitled to receive compensation at the daily equivalent of the rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, including traveltime, and while so serving on the business of the Council away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(e) The Council shall continue in existence until terminated by law.

(20 U.S.C. 929) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1411, 92 Stat. 2370; amended Oct. 17, 1979, P.L. 96-88, sec. 508(j)(3)-(8), 93 Stat. 694; amended Nov. 8, 1985, P.L. 99-145, sec. 1204(b)(3)-(5), 99 Stat. 720.

STUDY OF DEFENSE DEPENDENTS' EDUCATION SYSTEM

SEC. 1412. (a)(1) As soon as practicable after the date of the enactment of this Act, the Director shall provide for a comprehensive study of the entire defense dependents' education system, which shall include a detailed analysis of the education programs and the facilities of the system.

(2) The study required by this subsection shall be conducted by a contractor selected by the Director after an open competition. After conducting such study, the contractor shall submit a report to the Director not later than two years after the effective date of this title describing the results of the study and giving its assessment of the defense dependents' education system.

(b) In designing the specifications for the study to be conducted pursuant to subsection (a)(1), and in selecting a contractor to conduct such study under subsection (a)(2), the Director shall consult

with the Advisory Council on Dependents' Education established under section 1411 of this title.

(c) The Director shall submit to the Congress not later than one year after the effective date of this title the report submitted to him under subsection (a)(2) describing the results of the study carried out pursuant to subsection (a)(1), together with the recommendations, if any, of the contractor for legislation or any increase in funding needed to improve the defense dependents' education system. Notwithstanding any law, rule, or regulation to the contrary, such report shall not be submitted to any review before its transmittal to the Congress, but the Secretary of Defense shall, at the time of the transmittal of such report, submit to the Congress such recommendations as he may have with respect to legislation or any increase in funding needed to improve the defense dependents' education system.

(d) The Director may provide for additional studies of the defense dependents' education system to be conducted in accordance with the provisions of this section, but such studies shall not be conducted more frequently than once a year. A report of each study shall be submitted to the Congress in accordance with subsection (c), and the second sentence of such subsection shall apply with respect to the transmission of each such report.

(20 U.S.C. 930) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1412, 92 Stat. 2371; amended Aug. 6, 1979, P.L. 96-46, sec. 2(a)(8), 93 Stat. 340.

REGULATIONS

SEC. 1413. Not later than 180 days after the effective date of this title, the Secretary of Defense shall issue regulations to carry out this title. Such regulations shall—

(1) prescribe the educational goals and objectives of the defense dependents' education system,

(2) establish standards for the development of curricula for the system and for the selection of instructional materials,

(3) prescribe professional standards for professional personnel employed in the system,

(4) provide for arrangements between the Director and commanders of military installations for necessary logistic support for schools of the system located on military installations,

(5) provide for a recertification program for professional personnel employed in the system, and

(6) provide for such other matters as may be necessary to ensure the efficient organization and operation of the defense dependents' education system.

(20 U.S.C. 931) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1413, 92 Stat. 2372.

DEFINITIONS

SEC. 1414. For purposes of this title:

(1) The term "dependent" means a minor individual—

(A) who has not completed secondary schooling, and

(B) who is the child, stepchild, adopted child, ward, or spouse of a sponsor, or who is a resident in the household of a sponsor who stands in loco parentis to such individual

and who receives one half or more of his support from such sponsor.

(2) The term "sponsor" means a person—

(A) who is—

(i) a member of the Armed Forces serving on active duty, or

(ii) a full-time civilian officer or employee of the Department of Defense and a citizen or national of the United States; and

(B) who is authorized to transport dependents to or from an overseas area at Government expense and is provided an allowance for living quarters in that area.

(3) The term "overseas area" means any area situated outside the United States.

(4) The term "United States", when used in a geographical sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (excluding the Trust Territory of the Pacific Islands and Midway Island).

(5) The term "involuntarily separated" has the meaning given that term in section 1141 of title 10, United States Code.

(20 U.S.C. 932) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1414, 92 Stat. 2372; amended Nov. 29, 1989, P.L. 101-189, sec. 325(a), 103 Stat. 1415; amended Nov. 5, 1990, P.L. 101-510, sec. 504(b), 104 Stat. 1559.

EFFECTIVE DATES

SEC. 1415. (a)(1) Except as provided in paragraph (2) this title shall take effect on July 1, 1979.

(2) Section 1407(b) and the amendments made by section 1407(c), 1408(a), and 1408(b) shall take effect on October 1, 1978.

(b) Notwithstanding subsection (a) or any other provision of this title no provision of this title shall be construed to impair or prevent the taking effect of the provision of any other Act providing for the transfer of the functions described in this title to an executive department having responsibility for education.

(20 U.S.C. 921 note) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1415, 92 Stat. 2373.

TITLE XV—MISCELLANEOUS PROVISIONS

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PART C—MISCELLANEOUS AMENDMENTS; EFFECTIVE DATES [1]

PREPARATION OF CENSUS DATA

SEC. 1521. For the purpose of establishing a reliable statistical basis for the rendering of determinations under section 111(c) of the Elementary and Secondary Education Act of 1965, and for other purposes, the Secretary of Commerce shall take such steps as may be necessary to ensure that data developed from the 1980 decennial census will be available to the Secretary of Health, Educa-

[1] Parts A and B of title XV, relating to the International Year of the Child and the National Academy of Peace and Conflict Resolution, have been executed and are therefore not included in this compilation.

tion, and Welfare and to the Commissioner of Education identifying data for children under 18 years of age, by single year of age, for school districts. Such data shall relate to the family characteristics of these children, including income, education, and such other family characteristics as may be appropriate and available from the decennial census.

(20 U.S.C. 2711 note) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1521, 92 Stat. 2378.

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AVAILABILITY OF EDUCATION REPORTS

SEC. 1523. Any evaluation report or data or information collected in preparation of such report, which is paid for with appropriated funds, shall be made available, upon request, within 4 days to the chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives and of the Committee on Human Resources of the Senate.

(20 U.S.C. 1226c-1) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1523, 92 Stat. 2378.

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TELEVISION PROGRAM ASSISTANCE

SEC. 1527. (a) The Secretary is authorized to make grants to and contracts with public and private agencies for the production, development, or distribution (or any combination thereof) of programs designed for television systems, whether broadcast or nonbroadcast.

(b) The Assistant Secretary for Education shall be responsible for the administration of this section and shall also conduct surveys, research, and evaluation studies which may assist in decisions to support pilot programs for full scale production.

(20 U.S.C. 1221j) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1527, 92 Stat. 2379.

LIMITATION ON CONTRACTING AUTHORITY

SEC. 1528. Notwithstanding any other provision of this Act, no authority to enter into contracts under this Act shall be effective except to such an extent or in such amounts as are provided in advance in appropriations Acts.

Enacted Nov. 1, 1978, P.L. 95-561, sec. 1528, 92 Stat. 2379.

REPEAL

SEC. 1529. Title VII of the Education Amendments of 1974 is repealed.

(20 U.S.C. 1901, 1921, 1941-1944, 1961-1966, 1981-1983) Enacted Nov. 1, 1978, P.L. 95-561, sec. 1529, 92 Stat. 2380.

GENERAL EFFECTIVE DATE

SEC. 1530. Except as otherwise specifically provided in this Act, the provisions of this Act and the amendments and repeals made by this Act shall take effect October 1, 1978.

Enacted Nov. 1, 1978, P.L. 95-561, sec. 1530, 92 Stat. 2380.

NATIONAL SUMMIT CONFERENCE ON
EDUCATION ACT OF 1984

National Summit Conference on Education Act of 1984

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NATIONAL SUMMIT CONFERENCE ON EDUCATION

SEC. 5. (a) This section may be cited as the "National Summit Conference on Education Act of 1984".

(b)(1) The Congress finds that—

(A) increased economic competition requires the development of a better trained and educated workforce which our educational institutions must provide;

(B) problems and deficiencies in American elementary and secondary education require consideration of possible new directions in setting national education policy; and

(C) there should be a National Summit Conference on Education authorized by law by Congress to provide directions for such policy, and any conference established by the Department of Education should be complementary to the National Summit Conference on Education.

(2) For the purpose of this section, the term "Conference" means the National Summit Conference on Education established by this title.

(c) There are authorized to be appropriated to the Department of Education $500,000 for the purpose of conducting a National Summit Conference on Education, in accordance with the provisions of this section.

(d) The participants in the Conference shall consist of not more than two hundred individuals. The participants in the Conference shall be representative of teachers, parents, school administrators, school board members, State education officials, State legislators, Governors, students, business, labor, and special populations, including females, racial and ethnic minorities, and the disabled. The participants in the Conference shall be selected so as to provide racial, political, and geographic balance.

(e) The participants in the Conference shall be chosen from among nominees submitted to the Executive Committee (established pursuant to section 605) by organizations representing public and private elementary and secondary education, vocational education, adult education, teacher training, women, racial and ethnic minorities, and the handicapped, as well as from among nominees supplied by organizations representing business, organized labor, parents, libraries, and all levels of government.

(f)(1) There shall be an Executive Committee of the Conference consisting of—

(A) two individuals appointed by the President,

(B) two individuals appointed by the Speaker of the House of Representatives,

(C) two individuals appointed by the Majority Leader of the Senate, and

(D) six individuals appointed by the Governors of the States acting as a group.

The six individuals appointed by the Governors shall be appointed from individuals representing chief State school officers, local and State school boards, State legislatures, and Governors.

(2) The Executive Committee shall be responsible for selecting a presiding officer and for selecting the organizations (described in section 604) to supply a list of nominees for selection as participants in the Conference. Not less than 30 organizations shall be so selected by the Executive Committee. Each organization selected shall nominate at least the number of individuals specified by the Executive Committee for that organization in order to provide the representation required by sections 603 and 604. The Executive Committee shall determine the total number of individuals to be selected for participation, consistent with the requirements of this title.

(3) The Executive Committee shall serve without compensation.

(g) The Executive Committee shall appoint and fix the compensation of such staff as may be necessary, not to exceed the equivalent of four full-time employees. The staff shall assist the Executive Committee in planning, conducting, and completing the work of the Conference. The administrative support for the staff and the Executive Committee shall be the responsibility of the Department of Education in conjunction with the Speaker of the House of Representatives and the Majority Leader of the Senate. The staff and the Executive Committee shall report, through properly established lines of authority, to the Congress.

(h)(1) A majority of participants of the Conference shall constitute a quorum if votes are required. If task forces are created, the majority of task force participants shall constitute a quorum if a vote is required.

(2)(A) The Executive Committee shall select the Conference site and shall determine the duration of the Conference. The duration of the Conference shall not exceed six days. Neither the regional meetings (described in section 608(a)) nor the Conference shall meet before January 1, 1985.

(B) The Conference shall prepare and transmit a written record of its recommendations to the President, to the Congress, and to the States not later than four months after the last meeting of the Conference.

(i)(1) The Executive Committee, using data concerning education supplied by the Secretary of Education and by the States, shall develop an agenda for the Conference prior to the Conference. The data will include information furnished to the Secretary from statewide and regional summit conferences devoted to obtaining citizen views about education. The purpose of this agenda shall be to facilitate the development of recommendations on various issues raised by such recently issued education reports as the report of the National Commission on Excellence in Education, the Carnegie Report on American High Schools, the National Science Boards' Report on Mathematics, Science and Technology Education, and others.

(2) The agenda so developed shall take into account that it shall be the purpose of the Conference to create national bipartisan support for education at all levels of government, and to make recommendations for the development of viable local, State, and national intergovernmental and intragovernmental cooperation in education to make the most efficient use of funds from all levels of government.

(3) The agenda shall also provide for procedures for determining national consensus regarding types of strategies to be used and the appropriate levels of government to have primary responsibility for implementing educational policy.

Enacted October 19, 1984, P.L. 98-524, sec. 5, 98 Stat. .

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